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*Argentine Republic. Laws,  
Statutes, etc.,*  
THE  
**ARGENTINE CIVIL CODE**

(EFFECTIVE JANUARY 1st, 1871)

TOGETHER WITH  
**Constitution and Law of Civil  
Registry,**

TRANSLATED BY  
**FRANK L. JOANNINI**

**From the Original Spanish Text as Officially Promulgated**

REVISION COMMITTEE

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## TRANSLATOR'S NOTE

In the following translation of the Argentine Constitution, Civil Code and Amendatory Laws the translator has used civil law terms exclusively. Any attempt to employ common law terms would have led to confusion and obscurity, but the index has been so prepared as to afford the common law lawyer enlightening facility in consulting the work, and a number of footnotes have been inserted throughout giving authorized definitions of words not defined in the text itself.

The translator desires to express his appreciation of the valuable suggestions received from the gentlemen who composed the Committee of Revision, — Messrs. Eder, Kerr, and Wheless, which enabled the translator greatly to improve his rendition of these bases of Argentine law into the English language.

FRANK L. JOANNINI.



# INTRODUCTION.

BY PHANOR JAMES EDER<sup>1</sup>

In the Argentine, as in the greater part of South America, independence was followed by an era of internal disorder, anarchy, civil war, and dictatorship little favorable to the evolution or progress of the law. It is not surprising, therefore, that the old Spanish laws which had been applied in the colonies were suffered to continue in force, after the separation from the mother country, until a certain measure of political stability was acquired.

The modern period of Argentine's history may be said to date from the overthrow in 1852 of the dictator Rosas by General Urquiza, at the battle of Caseros. Prior to that time there had been a constant struggle between adherents of a centralized or unitarian system of government and the supporters of the federal principle. No progress had been made towards a solution of the fundamental political problems of the form of government. But after the triumph of Urquiza and his assumption of the office of provisional director of the confederation, a Constituent Congress was called, and adopted on May 1, 1853, a constitution modeled largely on that of the United States, which has continued with few modifications to be the fundamental law of the Argentine Republic till the present day. Turmoil and civil wars did not immediately cease, but with the accession to the Presidency of Bartolomé Mitre (1862), one of the greatest statesmen South America has produced, the period of uncertainty ended. Argentina then entered upon that period of stupendous material

<sup>1</sup> The writer is greatly indebted to Dr. Roberto Ancizar, a distinguished South American diplomat and a member of the Buenos Aires Bar, for valuable comments and corrections.



development of her vast resources, still proceeding, which is so rapidly making her one of the great nations of the earth.

The spirit of the law then had an opportunity to unfold itself. The constitution provided that it should be the duty of Congress to enact the civil, commercial, penal, and mining codes, such codes, however, to be enforced by the local courts, federal or provincial, according to their respective jurisdictions (Article 67, subdivision 11).

A beginning had already been made under Urquiza.

A decree issued by him as Provisional Director of the Confederation, and his minister, Dr. Luís J. de la Peña, provided for a commission to draft four codes: the civil, commercial, penal, and procedural. In the preamble to the decree it was said, among other things, that the legislation then in force "contains laws passed during a period of time extending over many centuries unknown to the people on whom they are binding, stored away in court archives or in the private libraries of a few individuals fortunate enough to possess them as priceless curiosities; society at large, and very often jurists and the judges themselves, are ignorant of their very existence, and consequently the sudden and unexpected application of these laws is as inappropriate as it would be to adjudge matters by provisions which have not been duly promulgated."

This stricture was not unmerited. The Spanish colonies in America were governed by the laws of the Indies and the general body of Castilian law, some of it very ancient and inaccessible. In addition to the more recent laws and enactments, "*Recopilaciones*" or compilations of which were published from time to time reproducing also some of the ancient law, but never the whole of it, the following old codes or laws were in force: the *Nueva Recopilación de Leyes*, issued in 1567; the *Leyes de Toro*, issued in 1505; the Royal Ordinances or *Fuero Viejo* of Castile (1356); the *Ordenamiento* or Edict of Alcalá (1386); the *Fuero Juzgo* or Visigothic Code,<sup>2</sup> the

<sup>2</sup> This dates back to the fifth century. The first Spanish version appears to have been made in the thirteenth century. See the valuable work on this code, including translation, by S. P. Scott, Esq., published by the Comparative Law Bureau.

*Fuero Real* or *Fuero de las Leyes* (1255), and the *Siete Partidas*,<sup>3</sup> concluded in 1263, although not given the force of positive law until proclaimed by the *Ordenamiento de Alcalá*, which provided that controversies that could not be settled by the laws of Alcalá or the *Fuero Real* or by the fueros of particular localities should be solved by the laws of the *Siete Partidas* and the same were adopted as Spanish laws.

A vast number of royal *pragmáticas*, *cédulas*, *decretos*, *órdenes* and *resoluciones* which had never been compiled, but were scattered, were first incorporated in an accessible form in the *Novísima Recopilación*, published in 1805.

The author of the Uruguayan Code stated, describing a similar condition of affairs in his own country, that there were assuredly over 50,000 laws which, under one head or another, are daily invoked or could be invoked in the courts (*Acevedo*, cited in Guillot's *Comentarios del Código Civil*, page 11).<sup>4</sup>

In accordance with Urquiza's decree, Dr. Lorenzo Torres was appointed, with two assistants, to draft the civil code. He resigned and his place was taken by Dr. Dalmacio Velez Sarsfield. Political events prevented the performance of the work at the time, but soon after the adoption of the new constitution, a law (December 2, 1854) was passed authorizing the executive power to appoint a body of jurisconsults, under

<sup>3</sup> A translation by S. P. Scott, Esq., of the editorial staff of the Comparative Law Bureau, will shortly be published.

<sup>4</sup> In commercial cases recourse was had to the *Consulado del Mar* and the Ordinances of Burgos, until the promulgation in 1737 of the Ordinances of Bilbao, which were modeled on Colbert's commercial ordinances for France. With some slight modifications, the Ordinances of Bilbao and the *Tribunal del Consulado* (created by the cedula of 1794 organizing the mercantile tribunals and procedure), continued in force in Argentina until the constitution of 1853. The commercial code of Dr. Velez Sarsfield and Dr. Acevedo was promulgated in Buenos Aires in 1859. That code was based principally on the Brazilian Code of 1850. Congress by law of September 10, 1862, promulgated it as the commercial code for the nation, the influence of Sarmiento causing it to be passed without discussion, thus "setting a fatal precedent which was applied later to all the main Argentine legislation, producing the pernicious result of sanctioning codes imperfectly drafted and without adequate finish of form or substance," as one school, believers in democratic and congressional intervention in the most technical matters, holds. The other school in the Argentine, as elsewhere, insists that a popular Congress is unfit to pass upon intricate questions of jurisprudence and its attempt to do so, article by article, would make a botch of an organic and harmonious code.

the title of the Codifying Commission, to work on the drafts of the codes prescribed by the Constitution. Again political disturbances interfered and the law does not appear to have been availed of. But upon the definite reorganization of the Constitutional National Unity by Mitre, another law, of June 6, 1863, authorized the executive power to appoint codifying commissions, and Dr. Velez Sarsfield, now indisputably the most eminent lawyer of his day, was again appointed to draft the civil code. On June 21, 1865, he submitted to the government his draft for the first two books of the code; the third and fourth books were published in 1868. The executive power presented it to Congress on August 25, 1869, and it was enacted into law, without any discussion whatsoever, on September 29, 1869, not without some opposition, however, being manifested at this procedure of shutting off debate. Dr. Rivarola says that its prompt passage was due to "the great authority which the eminent author of the code enjoyed," but we may be permitted to doubt whether the same political reasons looking towards the strengthening of the union, which made it advisable to entrust the draft to a single man instead of to a commission, did not have greater weight, coupled with the strong influence of the Executive, in forcing a speedy passage.

The code went into effect January 1, 1871. Up to the present time only two laws amending the code have been passed. The first, in 1882, purported to be simply a correction of typographical errors, but contains some amendments that go beyond a mere change of form. The second was more important; it repealed the title on marriage, substituting in its place the law of civil marriage of November 2, 1888, amended in turn by the law of November 12, 1889, which provided for the incorporation of the articles of the law in the civil code under appropriate numbers, the numeration of the rest of the articles of the code remaining undisturbed.

Article 67, subdivision 11, of the constitution heretofore cited, is interpreted to mean that Congress cannot by any special law, not directly amending the civil code or directly incorporated into it, affect in any way whatsoever the civil

law; any attempt to do so, whether intentional or not, is unconstitutional and void (Rivarola).

*Sources of the Code.*—The Code Napoléon has served more or less as a model for all the South American civil codes (including the Argentine), which follow it closely in most fundamental matters, but adopt a different method of classification and arrangement. Whereas the French Code divides its matter into three books, Persons, Things, and Modes of Acquiring Property, including succession and contracts, the Chilean Code, drafted by Dr. Bello (to which the Colombian and Ecuadorian codes are closely related), is divided into four books: 1. Persons. 2. Of Property, its Ownership, Possession, and Enjoyment. 3. Of Succession and Donations *inter vivos*. 4. Of Obligations in General and Contracts.

Dr. Velez Sarsfield, instead of choosing the method of either the French or Chilean codes, followed the order established by Freitas in his draft of a civil code for the then Empire of Brazil, with only slight variations. In Book I he includes persons in general and personal rights in family relations; II, personal rights in civil relations; III, real rights; and IV, successions. Dr. Velez Sarsfield's work, as a codifier's should be, is almost wholly lacking in originality, in the sense that every article of his code can be definitely traced to some preëxisting foreign code or commentator. His indebtedness, even to the extent of the notes presented with his project, to Dr. Freitas and other foreign authors was enormous; where he exercised, with success for the most part, the highest talents of a jurist was in purifying his sources of contradictions and ambiguities, in choosing the provisions and interpretations best adapted to the peculiar problems presented, and in setting forth complicated legal rules in clear and terse language. The fact that the code on the whole has well stood the test of time is a tribute to the skill and care with which the selection and compilation was made, and the remarkable progress of Argentina is undeniable evidence that it was suited to the needs of the country.

One Argentine writer (Dr. Lisandro Segovia: *Introducción a la Exposición y Crítica del Código Civil*) has taken the trouble

to compute Dr. Velez Sarsfield's indebtedness to the various authors and codes and proclaims the result to be: Zacharie, 78 articles; Aubry y Rau, 700; Goyena, 300; Chilean Civil Code, 170; French Civil Code, 1100; Troplong, 50; Demolombe, 52; Louisiana Code, 52; Acevedo's Uruguay Code, 27; Chabot, 18; Maynz, 13; Molitor, 13; Savigny, 4 — a total of 2556 articles. The remaining articles, says Dr. Machado (*Exposición y Comentarios del Código Civil Argentino*, vol. 1) were taken from Freitas' Project of Civil Code for Brazil.

*Argentine Civil Law and its Sources.* — No satisfactory definition of *civil law* as the term is used in Continental and South American countries can be given. The concept can best be arrived at by a process of elimination, by ascertaining what it is *not*, rather than by affirmation of what it is. But a little closer analysis than the statement that it is not public law, penal law, commercial law, etc., may be opportune.

Civil law is essentially a branch of *private* law, as distinguished from *public* law; yet public law is often concerned with it as in the case of private rights and guaranties enumerated in the constitution, and of civil rights secured by treaties under international law. So, too, as the State often touches hands with private individuals in respect of property, it is found convenient, even if not strictly essential or logical, to incorporate in the civil codes many provisions governing the acquisition, transfer and prescription of the property of the State or municipalities, which might with equal propriety be included in the administrative or fiscal codes.

Civil law, again, is usually sharply differentiated, in contrast to modern Anglo-Saxon legal ideas, from commercial law, which applies only to special classes of persons, traders, or to special classes of transactions, commercial affairs. The question what persons and what transactions are to be governed by the commercial code is decided differently in different jurisdictions and gives rise to much controversy. As a generalization perhaps it may be said that while the civil law treats of family law and of property as if it were static, in more or less permanent relations and constituting the *patrimony* of persons, the commercial law on the other hand treats of

credits and property as dynamic, constantly mobilized and subject to the flux of rapid changes of ownership. Consequently in the former the greater emphasis is on realty, in the latter on personality.

The federal organization of the Argentine Republic and the provisions of its constitution make a fundamental division of its legislation into substantive and adjective and require the line between the two to be very sharply drawn. In general, substantive law is national, for the country at large; but the administration of justice, the organization of courts and of procedure, belong to the separate Provinces, which legislate as sovereign powers in respect thereto.<sup>5</sup>

Nor does civil law embrace the penal law or mining law or special railroad or waters law, etc., although all of these may often touch hands with it. In short, the undefined residuum left from the general law, after deducting all that it is *not*, is the civil law.

As understood by the Argentine codifiers and laws, the principal, though not unique, object of the civil law is to govern the two leading social institutions — the *family* and *property* — in the widest acceptation of the term as equivalent to patrimony. Neither of these institutions is deemed the creature of the law, but they are the product of the natural evolution of human society, and the mission of the legislator is merely to express the general will which shall decide controversies between private individuals.

But the function of a civil code is not to express all the general principles of antecedent or crystallized law applicable. The civil code is not the sole source of the civil law. While it is true that the civil code is the keystone of the whole legal structure and other codes and special laws of coördinate

<sup>5</sup> There is in addition an analogous federal legislation for judicial procedure and a national legislation for the capital of the Republic and for the national territories. The diversity of procedural legislation gives rise, as might be expected, to many inconveniences with which the American lawyer, who is even still more oppressed by the tangle of state and national sovereignties, can well sympathize. The law's delays and dissatisfaction with legal procedure seem no less in Argentina than in our own country. There are sixteen codes of procedure in the Argentine. However, the tendency towards uniformity is visibly advancing, aided by the substantial modifications which the dogma of state sovereignty is rapidly undergoing.

authority rest for support and interpretation on it, yet it is to be noted that the whole body of even the civil law, as distinguished from other branches, is not to be found in the civil code.

The sources of the civil law (to be distinguished from the historical sources of the code, of which we have already spoken) and the order of their application or supremacy are as follows:

1. The constitution.
2. International treaties.
3. The text and spirit of the civil code.
4. The principles of analogous laws which govern the questions at issue.
5. The general principles of law.

As aids to interpretation but not as sources of the civil law, because they have no binding authority, there are: 1. *Jurisprudence*, the term which comprises, in French and Spanish, the decisions of the courts; and 2. *Doctrine*, or the principles of law as expounded by writers and commentators of authority.

The constitution by its own terms is supreme.

“This Constitution, the laws of the Nation which shall be enacted by Congress in pursuance thereof, and treaties with foreign powers, shall be the supreme law of the land; and the authorities in every Province shall be bound to conform thereto, anything in the Provincial constitution or laws to the contrary notwithstanding.” (Art. 31.)

It is not merely a regulation of political institutions. Articles 14, 15, 17, 18, 19, 20, and 28 lay down fundamental general principles of civil law superior to all other legislation.

The provisions of civil law contained in treaties with foreign nations are necessarily of limited scope, but are of the utmost importance in such a cosmopolitan country as Argentina, whose remarkable progress has been due in no small measure to the liberality of law and cordiality of treatment with which foreigners have been received.

The code itself is the chief source of civil law, supplemented, as it itself provides, by the principles of other written laws and

general principles of law. "If a question of civil law cannot be determined either by the text or by the spirit of the law, decision shall be had according to the principles of analogous laws; and if then the question be still doubtful, it shall be determined by the general principles of law, taking into consideration the circumstances of the case" (Art. 16). It is to be observed that a question must not be decided according to the principles of analogous laws except when it is not possible to decide it by the text (which means in practice not merely what is express, but also what is implied) and the spirit of the code; nor is it permissible to resort to such a vague guide as "general principles of law" except when both the code and analogy fail.

It is to be noted that all civil laws in force prior to the adoption of the code have been repealed, and have ceased to possess any binding force, not merely those laws which are inconsistent with the code provisions. Consequently, when Article 16 speaks of rendering decision according to analogous *laws*, it means strictly what it says — actual laws in force (Rivarola, pages 13–15); *primarily*, provisions of the code itself in regard to analogous matters; for instance, in deciding a question arising out of a contract of exchange, the provisions of the code as to sales will be looked at; and so, of representation and mandate; assignment, on the one hand, and sale, exchange, or donation, as the case may be, on the other, etc.; *secondarily*, other codes, notably the commercial and the penal; and *thirdly*, other laws in force. It does *not* mean laws, such as the old Spanish laws, formerly in force, nor foreign laws. These can only become of importance when all analogous existing laws fail, and then may be looked to in order to determine what are the "general principles of law" that are applicable. This is necessarily of rare occurrence, as many of the general principles of law are found scattered here and there throughout the code.

Neither "jurisprudence" nor "doctrine" is of binding force upon the courts; they can only be looked to for aid in interpreting the written laws. As so much of the civil code is taken directly or indirectly from French sources, great attention



is often paid in practice to the writings of the leading French jurists.

This is becoming less so, year by year, as with the huge increase of the business of the courts that is naturally coincident with the development of the country's commerce and resources, the Argentine is gradually developing, through court decisions, text-books, and commentaries, a large body of truly national law.

We may, therefore, fittingly close this introduction with a brief notice of the literature on the Civil Code.

## BIBLIOGRAPHY<sup>6</sup>

Very little attention appears to have been given up to the present time to the history of Argentine law. The history of constitutional and international law, the two branches of jurisprudence in which the Argentinos have most distinguished themselves, have been well dealt with; but no attempt at a complete history of private law has yet been published. The principal data are succinctly presented in Prof. Juan José Montes de Oca's "*Introducción general al estudio del derecho*" (Buenos Aires, 1884), in Adolfo Casabal and Francisco Sugasti's notes, of the lectures of Prof. Manuel Augusto Montes de Oca (Buenos Aires, 1895), and in the "*Introducción al estudio de las ciencias sociales Argentinas*," by Prof. Juan Agustin Garcia. Dr. C. O. Bunge, of the faculty of law and political sciences of the University of Buenos Aires, noting the lack, has commenced a study of the internal general history of Argentine law, but so far only the first volume has appeared (*Historia del derecho argentino*, Buenos Aires, 1912\*), which is concerned entirely with the antecedents of Argentine law, viz., the law of the aboriginal Indians, which he admits has had practically no influence on posterity, and the Spanish law, which he examines from the earliest times and primitive sources, in the light of positivist history. The work is ambitious, the author attempting to correlate legal history with social history, but it may be doubted whether the known facts of the latter are sufficient to give his generalizations any great practical or scientific value.

At the time of the publication of the draft of the code, the severest contemporaneous criticism was contained in Dr. J. B. Alberdis' "*Carta Crítica al Código Civil*" (1868). The first official edition of the code enacted into law was printed in New York in 1870, the work being in charge of the minister, Manuel R. Garcia. It is stated that more than 1000 alterations

<sup>6</sup> The works marked with an asterisk (\*) are those principally consulted by the writer in the preparation of this introduction.

were introduced, "under color of correcting typographical or grammatical errors," a proceeding approved by the Executive Power on December 19, 1870. Various official editions have since been published: the edition entrusted to Doctors Chavarria and Ruis de los Llanos also making corrections; and the latest proposed official revision, by Dr. Agustin de Vedia, recommends more than 1000 additional variations and corrections, many of which alter radically the original ideas of the codifier.

The literature on the civil law up to the present time is not so extensive as might be hoped for. Among the writers thereon, the first place is generally assigned to the author of the code himself, Dr. Velez Sarsfield. His notes constitute a work of much erudition, if of little originality, and have furnished and continue to furnish, although not of obligatory authority, the most abundant source of help to judges and practitioners for the study of the code.

Soon after the adoption of the code Drs. O. Leguizamon and José Olegario Machado's "*Instituta del Código Civil Argentino*" appeared and is still esteemed for its notes, although now superseded by Dr. Machado's larger work. In 1881 Dr. Lisandro Segovia published "*El Código Civil de la República Argentina con su explicación y crítica, bajo la forma de notas*," which, while pointing out innumerable defects, bore tribute to the worth of the code. In 1883 Vol. I appeared of "*Observaciones críticas sobre el Código Civil*," by Dr. Manual A. Saez, who showed himself a passionate opponent of the code. It gives an extensive commentary after each article, but comprises only the two preliminary titles and the complementary title of the code. The author died without publishing a second volume.

Next came Dr. Baldomero Llerena's first edition of "*Derecho Civil, Concordancias y Comentarios del Código Civil Argentino*" (1887). The work is considered of much practical value by lawyers and judges, stands high as an authority, and has run through subsequent editions. His views on many points, however, were sharply, even vindictively, criticized by Dr. Segovia in his "*Código Civil Argentino anotado, obra complementaria de los comentarios del mismo autor*" (1894), wherein he takes revenge for some distasteful comments of Llerena's.

Dr. José Miguel Guastavino has written (1901) "*Notas al Código Civil*," and, of course, a large number of books and articles have been written on special topics of the civil law, but the most important and exhaustive commentary on the whole code is Dr. Jose Olegario Machado's "*Exposición y Comentario del Código Civil Argentino*" \* in eleven volumes, the first of which appeared in 1898 and the last in 1903. At the end of the work there is a study of the law of civil registry (*Estudio sobre la ley del Registro Civil*), a law which, in Dr. Machado's opinion, should have been an integral part of the code. Dr. Machado's plan is, taking the articles of the code *seriatim*, first, to quote the text, literally; then to make his commentaries thereon, studying and condensing the opinions of the authors who served as guides

to the codifier and giving his own views at length; then to reproduce Dr. Velez Sarsfield's original notes, and, finally, to add a very brief digest of court decisions applicable to the article under treatment; the work, in the eyes of the Anglo-American lawyer, would be more valuable if the decisions were given at greater length.

All the foregoing works are analytical — detailed studies of particular points and of the articles in their numerical order, intended to be of practical use for the student, lawyer and judge. In his "*Instituciones del Derecho Civil*" \* (Buenos Aires, 1901, 2 vols.) Dr. Rodolfo Rivarola essayed a more philosophical work — a synthetic treatise departing wholly from the usual method of expounding the code article by article.

The best digest of court decisions is Dr. Augusto Carette's "*Diccionario de la Jurisprudencia Argentina o síntesis completa de las sentencias dictadas por los Tribunales argentinos*" (4 vols., Buenos Aires, 1907). A companion work, constituting an encyclopedia of all statute law, is the same editor's "*Diccionario de legislación de la República Argentina*" (5 vols., Buenos Aires, 1912–date). Another important digest, but solely of cases in the *cámaras* or courts of appeal of the capital, is J. J. Hall's "*Instituta de la Jurisprudencia establecida por las Cámaras de Apelaciones de la Capital en sus sentencias*," 1863–1903 (10 vols., Buenos Aires, 1889–1911). Some idea of the volume of judicial business in the Argentine may be had from the fact that the decisions of the Supreme Court alone from 1863 to date fill 115 volumes. A periodical review of court decisions and statute law is now being published under the name of "*Revista de legislación nacional y provincial*."

Finally, mention should be made of Dr. Ernesto Quesada's edition of the commercial code and other mercantile laws for the "*Commercial Laws of the World*" \* series. It includes a valuable introduction and notes containing frequent cross-references to the civil law. The English translation is by Wyndham A. Bewes, Esq. (Boston Book Company, 1912).

New York, April, 1915.

# CONSTITUTION

OF THE

## ARGENTINE NATION.

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We, the representatives of the Argentine Nation, in General Constituent Congress assembled by the will and election of the Provinces which compose it, in fulfillment of previous agreements, for the purpose of forming the national union, establishing justice, insuring domestic peace, providing for the common defense, promoting the general welfare, and securing the benefits of liberty to ourselves, our posterity, and to all men in the world who may desire to inhabit the Argentine soil; invoking the protection of God, the source of all reason and justice, ordain, decree, and establish this Constitution for the Argentine Nation.

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### PART I.

#### FIRST AND LAST CHAPTER.

##### Declarations, Rights, and Guaranties.

**Article 1.** The Argentine Nation adopts for its Government the Federal Republican Representative form, as established by this Constitution.

**2.** The Federal Government supports the Roman Catholic Apostolic Faith.

**3.** The authorities who exercise the Federal Government shall reside in the city which may, by a special act of Congress,

be declared the capital of the Republic<sup>1</sup> upon the cession by one or more of the Provincial Legislatures of the territory to be federalized.

4. The Federal Government shall defray the expenses of the Nation out of funds of the National Treasury, derived from the proceeds of import and export duties, *until eighteen hundred and sixty-six, in accordance with the provisions of subdivision 1 of Article 67*<sup>2</sup>; from the sale or lease of lands of national ownership; from the postal revenues; from the other taxes which the General Congress may levy equitably and in proportion to the population, and from the loans and operations of credit which said Congress may decree to provide for urgent needs of the Nation or for enterprises of national utility.

5. Each Province shall frame for itself a Constitution under the republican representative system, according with the principles, declarations, and guaranties of the national Constitution; which shall assure the administration of justice therein, its municipal government, and primary instruction. Upon these conditions, the Federal Government guarantees to each Province the enjoyment and exercise of its institutions.

6. The Federal Government shall have the right to intervene in the territory of the Provinces to guarantee the republican form of government, or to repel foreign invasions, and, on request of their constituted authorities, to maintain them in power or restore them thereto, if they shall have been deposed by sedition or invasion from another Province.

7. The public acts and judicial proceedings of each Province enjoy full faith and credit in every other Province; and Congress may determine by general laws the manner in which such acts and proceedings shall be proved, and the legal effects they shall produce.

8. The citizens of each Province enjoy all the rights, privileges, and immunities inherent in citizenship in the others. The extradition of criminals is a reciprocal obligation among all the Provinces.

<sup>1</sup> Buenos Aires was declared the capital by Act No. 1029, of September 21, 1880.

<sup>2</sup> The words printed in italics were ordered stricken out by the National Convention held at Santa Fe, September 12, 1866.

9. There shall be no customhouses throughout the territory of the Nation, other than the national customhouses, in which the tariffs enacted by Congress shall govern.

10. In the interior of the Republic, the circulation of articles of national production or manufacture, as well as that of goods and merchandise of all classes entering through the national customhouses, shall be free from duties.

11. Articles of national or foreign production or manufacture, as well as live stock of all kinds, passing from the territory of one Province into another, shall be exempt from the so-called transit dues, as shall the vehicles, vessels, or beasts used for their transportation; and no other duty shall be imposed upon them hereafter, under any name whatsoever, for the act of their passing through the territory.

12. Vessels bound from one province to another, shall not be compelled to enter, cast anchor, and pay duties on account of transit; and in no case shall any preference be granted by means of laws or regulations of commerce to one port over another.

13. New Provinces may be admitted into the Nation; but no new Province shall be erected in the territory of one or more other Provinces, nor shall one Province be formed from a number of others, without the consent of the Legislatures of the interested Provinces and of Congress.

14. All the inhabitants of the Nation enjoy the following rights, subject to the laws regulating their exercise: to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, remain in, pass through, or leave Argentine territory; to publish their ideas through the press without previous censorship; to use and dispose of their property; to associate for useful purposes; to profess their religious faith freely; to teach and to learn.

15. There are no slaves in the Argentine Nation; the few slaves now existing shall become free the moment this Constitution is sworn to; and a special law shall regulate the indemnifications to which this declaration may give rise. Contracts for the purchase and sale of persons are criminal acts for which the contracting parties, as well as the notary or official before whom they are executed, shall be held liable.

And slaves introduced therein in any manner whatsoever shall become free by the mere act of setting foot on the territory of the Republic.

**16.** The Argentine Nation does not recognize prerogatives of blood or birth; there are therein no personal privileges or titles of nobility. All its inhabitants are equal before the law, and eligible to office subject to no condition other than fitness. Equality is the basis of taxation and all public charges.

**17.** Property is inviolable, and no inhabitant of the Nation can be deprived thereof other than by a judgment founded on law. Expropriation for a cause of public utility must be provided by law and indemnification previously made. Congress alone has the power to lay the taxes set forth in Article 4. No personal service can be required of any one, except by virtue of a law or a judgment founded on law. Every author and inventor is the exclusive owner of his work, invention, or discovery, throughout the term granted him by law. Confiscation of property is forever stricken out of the Argentine Penal Code. No armed body can make requisitions, nor demand assistance of any kind.

**18.** No inhabitant of the Nation shall be punished without previous trial founded on a law antedating the act for which he is tried, nor shall he be tried by special commissions, or removed from the jurisdiction of the judges designated by law prior to the commission of the offense with which he is charged. No one can be compelled to be a witness against himself; nor arrested except on an order in writing from an authority of competent jurisdiction. The defense of persons and of rights in court is inviolable. Domicile is inviolable, as are private correspondence and papers; and a law shall determine in what cases and upon what grounds the former can be entered and the latter seized. The penalty of death for political causes, torture of all kinds and flogging are abolished. The prisons of the Nation shall be sanitary and clean, for the safekeeping and not for the punishment of the prisoners, and any measure which, under pretext of precaution, inflicts upon them more hardships than those required for their security, shall render liable the judge authorizing it.

**19.** The private acts of man which in no way affect order or public morals, or are injurious to third persons, are reserved to God alone, and exempted from the authority of Magistrates. No inhabitant of the Nation shall be compelled to do what the law does not command, nor forbidden to do what it does not prohibit.

**20.** Aliens enjoy in the territory of the Nation all the civil rights of citizens; they may engage in their industry, commerce, or profession; possess, purchase, and dispose of real property; navigate the rivers and coastal waters; freely practice their religious faith; make testaments and marry in accordance with the laws. They are not obliged to accept citizenship, or to pay forced extraordinary taxes. They obtain nationalization by residing two consecutive years in the Nation; but the authorities may reduce this period in favor of an applicant who claims and proves services to the Republic.

**21.** Every Argentine citizen is obliged to take up arms in the defense of the country and this Constitution, in accordance with the laws which Congress may enact to this end and the decrees of the National Executive. Citizens by naturalization are free to render or refuse this service during a term of ten years from the day they obtain their letters of citizenship.

**22.** The people do not deliberate nor govern, other than through their representatives and the authorities created by this Constitution. Any armed force or gathering of persons attributing to itself the rights of the people and petitioning in their behalf, is guilty of the crime of sedition.

**23.** In case of domestic disturbance or foreign attack, endangering the observance of this Constitution and the authorities created by it, the Province or territory in which the disturbance of order takes place, shall be declared in a state of siege and the constitutional guaranties suspended therein. But during such suspension the President of the Republic shall not have the power by himself either to sentence anyone or inflict punishments. His power shall be limited in such cases, with respect to persons, to their arrest or transfer from one part of the Nation to another, should they not prefer to leave Argentine territory.



**24.** Congress shall promote the reform of the legislation now in force in all its branches, and the establishment of trial by jury.

**25.** The Federal Government shall encourage European immigration; and it shall not restrict, limit, or obstruct by taxation of any kind the entry into Argentine territory of aliens coming to it for the purpose of working the land, improving industries, or introducing and teaching arts and sciences.

**26.** The navigation of the inland rivers of the Nation is free to all flags, subject solely to the regulations which the national authority may prescribe.

**27.** The Federal Government is bound to consolidate its relations of peace and commerce with foreign powers, by means of treaties consistent with the principles of public law established by this Constitution.

**28.** The principles, guaranties, and rights recognized in the preceding articles cannot be altered by the laws which may regulate their exercise.

**29.** Congress cannot grant to the National Executive, nor can the Provincial Legislatures grant to the Governors of the Provinces, any extraordinary faculties, or the whole of the Public Power, or authority to perform acts of submission or supremacy whereby the lives, the honor, or the property of Argentines may be placed at the mercy of any government or person whatsoever. Acts of this nature shall be absolutely void and shall subject those who formulate them, as well as those who consent thereto or sign them, to the liability and penalty of infamous traitors to their country.

**30.** The Constitution may be amended either in whole or in any part thereof. The necessity for such amendment must be declared by Congress by a vote of at least two-thirds of its members; but it may be amended only by a Convention called to meet for that purpose.

**31.** This Constitution, the laws of the Nation which Congress may enact in pursuance thereof, and the treaties with foreign powers are the supreme law of the Nation; and the authorities of every Province are bound to abide thereby,

notwithstanding any provision to the contrary contained in the Provincial laws or constitutions, excepting, as to the Province of Buenos Aires, the treaties ratified after the Compact of November 11, 1859.

**32.** The Federal Congress shall not pass any law restricting the liberty of the press or subjecting it to federal jurisdiction.

**33.** The declarations, rights, and guaranties enumerated in the Constitution shall not be construed to deny other rights and guaranties not enumerated, but arising out of the principle of the sovereignty of the people and the republican form of government.

**34.** The judges of the Federal Courts cannot at the same time be judges of the Provincial Courts, nor does the Federal Service, either civil or military, give residence in the Province in which it is performed, unless it be the habitual domicile of the employee, this provision being understood to apply to federal employees seeking office in the Province in which they may be temporarily.

**35.** The names successively adopted up to the present time since 1810, namely: "United Provinces of the River Plate," "Argentine Republic," "Argentine Confederation," shall hereafter be official names indistinctively for the designation of the Government and territory of the Provinces, the words "Argentine Nation" being employed in the drafting and sanction of the laws.

## **PART II.**

### **AUTHORITIES OF THE NATION.**

#### **TITLE I. FEDERAL GOVERNMENT.**

##### **SECTION I. OF THE LEGISLATIVE POWER.**

**36.** A Congress composed of two Chambers, — a Chamber of Deputies of the Nation and a Chamber of Senators of the Provinces and of the Capital, — shall be vested with the Legislative Power of the Nation.

#### **CHAPTER I.**

##### **Of the Chamber of Deputies.**

**37.** The Chamber of Deputies shall be composed of representatives elected directly by the people of the Provinces and of the Capital, which shall be considered for this purpose as electoral districts of a single State, by plurality of votes, in the proportion of one for every twenty thousand inhabitants or fraction of not less than ten thousand.<sup>3</sup>

**38.** The Deputies to the first Congress shall be chosen in the following proportion: For the Province of Buenos Aires, twelve; for the Province of Córdoba, six; for the Prov-

<sup>3</sup> This article was amended by the National Convention which met in the Capital of the Republic, March 15, 1898, as follows:

Art. 37. The Chamber of Deputies shall be composed of representatives elected directly by the people of the Provinces and of the Capital, which shall be considered for this purpose as electoral districts of a single State, by plurality of votes. The number of representatives shall be one for every thirty-three thousand inhabitants or fraction of not less than sixteen thousand five hundred. After the taking of each census, Congress shall determine the representation in accordance therewith, and may increase but may not reduce the basis fixed for each deputy.

ince of Catamarca, three; for the Province of Corrientes, four; for the Province of Entre Rios, two; for the Province of Jujuy, two; for the Province of Mendoza, three; for the Province of La Rioja, two; for the Province of Salta, three; for the Province of Santiago, four; for the Province of San Juan, two; for the Province of Santa Fe, two; for the Province of San Lu s, two; and for the Province of Tucum n, three.

**39.** For the second Congress a general census shall be taken and the number of Deputies determined in accordance therewith; but such census shall not be taken more than once in every ten years.

**40.** In order to be a Deputy it is necessary to have attained the age of twenty-five years, to have enjoyed four years' active citizenship, and to be a native of the Province in which elected, or have been a resident thereof for the two next preceding years.

**41.** This time the Legislatures of the Provinces shall prescribe the means whereby the direct election of the Deputies of the Nation shall be effected; for the future, Congress shall enact a general law.

**42.** Deputies shall hold office for four years and may be re-elected; but the Chamber shall be renewed one-half every two years; to which end the deputies elected to the First Congress shall, after having met, draw lots to determine those who shall vacate their seats at the end of the first period.

**43.** In case of vacancy, the Governor of the Province or of the capital, shall order a legal election to fill it.

**44.** The initiative of laws relating to taxes or recruiting of troops is vested exclusively in the Chamber of Deputies.

**45.** The Chamber of Deputies alone has the right to impeach before the Senate, the President, the Vice-President, the cabinet ministers, and the members of the Supreme Court and of other inferior tribunals of the Nation, in causes to enforce their liability brought against them for malfeasance, or for criminal offenses committed in the discharge of their functions, or for common crimes, after having taken cognizance thereof and having declared, by a vote of a majority of two-thirds of the members present, that grounds existed for the institution of proceedings.

## CHAPTER II.

### Of the Senate.

46. The Senate shall be composed of two Senators from each Province elected by their Legislatures by a plurality of votes; and of two from the Capital, elected in the form prescribed for the election of the President of the Nation. Each Senator shall have one vote.

47. The following are requisites for election as Senator: to have attained thirty years of age, to have been a citizen of the Nation for six years, to enjoy an annual income of two thousand *pesos fuertes* or its equivalent, and to be a native of the Province which elects him, or to have been a resident thereof during the two next preceding years.

48. The term of Senators is nine years and they may be re-elected an indefinite number of times; but the Senate shall be renewed by third parts every three years, those who are to vacate their seats after the first and second periods of three years being determined by lot after all of them shall have assembled.

49. The Vice-President of the Nation shall be President of the Senate; but he shall have no vote unless it be equally divided.

50. The Senate shall choose a President pro tempore to preside in the absence of the Vice-President, or when he is exercising the office of President of the Nation.

51. The Senate shall have the power to try in public the officials impeached by the Chamber of Deputies, and Senators, when sitting for that purpose, shall take the proper oath. When the defendant is the President of the Nation, the President of the Supreme Court shall preside over the Senate. No one shall be convicted without the concurrence of two-thirds of the members present.

52. Its judgment shall not extend further than to removal of the defendant from office, and disqualification to hold any office of honor, trust, or profit under the Nation. But the party

convicted shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law, before the ordinary tribunals.

**53.** The Senate shall also have the power to authorize the President of the Nation to declare one or more sections of the Republic in a state of siege, in case of foreign attack.

**54.** When the seat of a Senator becomes vacant on account of death, resignation, or any other cause, the Government to which the vacancy corresponds shall immediately order an election to fill it.

### CHAPTER III.

#### Provisions Common to Both Chambers.

**55.** Both Chambers shall assemble every year in ordinary session from May 1st to September 30th. But they may also be convened in extraordinary session by the President of the Nation, or adjourned by him.

**56.** Each Chamber is the judge of the elections, rights, and titles of its own members, as to their validity. Neither Chamber shall open a session without an absolute majority of its members; but a smaller number may compel the attendance of absent members, in such manner and under such penalties as each Chamber may provide.

**57.** Both Chambers shall open and close their sessions simultaneously. While they are in session, neither Chamber shall adjourn for more than three days without the consent of the other.

**58.** Each Chamber shall make its own regulations, and may, by a two-thirds vote, discipline any of its members for disorderly behavior in the discharge of his functions, or remove him on account of physical or moral inability taking place subsequently to his admission, and even expel him from its body; but a majority of one over one-half of the members present shall suffice to act on voluntary resignations from office.

**59.** Senators and Deputies, on taking their seats, shall take an oath to perform their duties faithfully and to act in all matters in accordance with the provisions of this Constitution.

**60.** No member of Congress can be indicted, judicially questioned, or molested for the opinions expressed or speeches made by him in the performance of his duties as a legislator.

**61.** No Senator or Deputy can be arrested between the day of his election and the day of the expiration of his term; except in case of being surprised *in flagrante* in the commission of a criminal offense punishable by death, an infamous penalty, or some other corporeal punishment, and in such case a report shall be made to the respective Chamber and the record of the preliminary proceedings in the case presented to it.

**62.** When a written complaint is filed before an ordinary judge against any Senator or Deputy, the respective Chamber may, after consideration of the merits of the case at a public hearing as shown by the record of the preliminary proceedings, suspend the accused by a two-thirds vote and surrender him to the Judge of competent jurisdiction for trial.

**63.** Either Chamber may cause to appear before it the Ministers of the Executive Power, in order to receive from them the explanations and reports it may deem advisable.

**64.** No member of Congress can receive any office or detail from the Executive Power, without the previous consent of the respective Chamber, excepting appointments constituting promotions in a service.

**65.** Regular ecclesiastics cannot be members of Congress, nor can Provincial Governors be members for their respective Provinces.

**66.** Senators and Deputies shall receive a compensation for their services to be fixed by law and paid out of the Treasury of the Nation.

## CHAPTER IV.

**Powers and Duties of Congress.**

**67.** The following are the powers and duties of Congress:

1. To legislate in regard to customhouses for foreign commerce and establish the import duties, which, as well as the rates of appraisement on which they are to be based, shall be uniform throughout the Nation; it being understood, however, that these duties as well as all other national taxes may be paid in the money current in the respective Provinces at its just equivalent. And to establish likewise export duties *until 1866, at which time they shall cease as a national tax, and cannot be made Provincial.*<sup>4</sup>

2. To lay direct taxes for a specified time and proportionately equal throughout the territory of the Nation, whenever the defense, common safety or general welfare of the State so require.

3. To contract loans of money on the credit of the Nation.

4. To provide for the use and alienation of lands of national ownership.

5. To establish and regulate a National Bank in the Capital and its branches in Provinces, with power to issue bank notes.

6. To arrange the payment of the internal and external debt of the Nation.

7. To fix annually the budget of the expenses of the administration of the Nation, and approve or reject the account of disbursement.

8. To grant subsidies to be paid out of the National Treasury to those Provinces whose revenues are insufficient, according to their budgets, to meet their ordinary expenses.

9. To make rules for the free navigation of inland rivers, declare ports of entry such as it may deem expedient, and create or abolish customhouses, provided that no customhouse for foreign commerce shall be abolished which existed in a Province at the time of its incorporation.

<sup>4</sup> The words underlined were stricken out by Amendment of September 12, 1866.



10. To cause money to be coined, determine its value and that of foreign coin; and to adopt a standard of weights and measures for the entire Nation.

11. To enact the civil, commercial, penal, and mining codes, without encroaching on local jurisdictions, the enforcement thereof to be vested in the Federal or Provincial tribunals, according to the respective jurisdiction under which the things or persons may come; and especially to enact general laws for the whole Nation on naturalization and citizenship, based on the principle of native citizenship; as well as laws on bankruptcy, the counterfeiting of currency, and public securities of the State, and such as may be required for the establishment of trial by jury.

12. To regulate maritime and inland commerce with foreign nations and of the Provinces with each other.

13. To arrange and establish the post-routes and general posts of the Nation.

14. To settle definitely the boundaries of the territory of the Nation, to determine those of the Provinces, to create new Provinces, and to provide by special legislation for the organization, administration, and government of the National Territories left outside the limits assigned to the Provinces.

15. To provide for the security of the frontiers; to maintain peaceful intercourse with the Indians, and to promote their conversion to Catholicism.

16. To provide for everything conducive to the prosperity of the country, the advance and welfare of all the Provinces, and the progress of enlightenment, by establishing plans of general and university instruction; and to promote industrial enterprise, immigration, the construction of railroads and navigable canals, the colonization of lands of national ownership, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of inland rivers, by protective laws and by temporary concessions of privileges and rewards for purposes of encouragement.

17. To establish tribunals inferior to the Supreme Court of Justice; to create and abolish offices, to grant pensions, decree honors, and grant general amnesties.

18. To accept or reject the grounds for the resignation of the President or Vice-President of the Republic; and to declare a new election to lie: to canvass the returns and correct them.

19. To approve or reject treaties concluded with foreign nations, and concordats entered into with the Apostolic See; and to make rules for the exercise of the ecclesiastical patronage throughout the Nation.

20. To admit into the territory of the Nation religious orders in addition to those now existing.

21. To authorize the Executive Power to declare war or make peace.

22. To grant letters of marque and reprisal and make rules concerning prizes.

23. To fix the strength of the land and naval forces of the Nation, both in time of peace and of war; and to make rules and ordinances for the government of such forces.

24. To authorize the calling out of the militia of any or all of the Provinces, when required in the enforcement of the laws of the Nation and when necessary to suppress insurrections or repel invasions. To provide for organizing, arming, and disciplining said militia, and for managing and governing such parts thereof as may be employed in the service of the Nation; reserving to the Provinces the appointment of their respective field and line officers, and the care of enforcing in their respective militia the discipline prescribed by Congress.

25. To permit the entry of foreign troops into the territory of the Nation, and the departure of the national forces therefrom.

26. To declare in a state of siege one or more sections of the Nation in case of domestic disturbance, and to approve or suspend a state of siege declared by the Executive Power during the recess of Congress.

27. To exercise exclusive legislation throughout the territory of the capital of the Nation, and over all other places acquired by purchase or cession in any of the Provinces, for the erection of forts, arsenals, magazines, or other establishments of national utility.

28. To make all laws and regulations which may be advisable for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the Argentine Nation.

## CHAPTER V.

### Of the Formation and Sanction of the Laws.

68. Laws may originate in either Chamber of Congress by means of bills presented by their members or by the Executive Power; except, however, such as relate to the objects set forth in article 44.

69. Upon the passage of a bill by the Chamber where it originated, it shall be sent to the other Chamber for discussion. After its passage by both Chambers, it shall be presented to the Executive Power for examination; and if approved by it, the Executive Power shall promulgate it as law.

70. Any bill not returned within a term of ten working days shall be considered as approved by the Executive Power.

71. No bill wholly rejected in one Chamber shall be introduced again during the sessions of that year. But if merely amended by the revising Chamber, it shall be returned to the Chamber of origin; and if the amendments are adopted by the latter by an absolute majority, it shall pass to the Executive Power of the Nation. If the amendments are rejected, the bill shall return a second time to the Chamber which made them, and if again passed by it by a majority of two-thirds of its members, the bill shall pass to the other Chamber, where such amendments shall not be considered rejected unless two-thirds of the members present vote against them.

72. When a bill is disapproved either in whole or in part by the Executive Power, it shall return with the objections to the Chamber of origin, where it shall discuss it anew, and if passed by a majority of two-thirds, it shall be again referred

to the other Chamber. If the bill is passed by both Chambers with the majority stated, the bill becomes law and shall pass to the Executive Power for promulgation. The vote in this case shall be by *yeas* and *nays*; and the names of the persons who took part in the vote, as well as the grounds on which they founded their votes, and the objections of the Executive Power shall be published in the press immediately. If the Chambers disagree in regard to the objections, the bill cannot be reintroduced at the sessions of that year.

73. In the sanction of the laws, the following clause shall be used: "The Senate and Chamber of Deputies of the Argentine Nation, in Congress assembled, etc., decree or sanction with the force of law."

## SECTION II. OF THE EXECUTIVE POWER.

### CHAPTER I.

#### Of its Nature and Duration.

74. The Executive Power of the Nation shall be discharged by a citizen having the title of "President of the Argentine Nation."

75. In case of illness, absence from the capital, death, resignation, or removal of the President, the Executive Power shall be exercised by the Vice-President of the Nation. In case of removal, resignation, or inability of both the President and Vice-President of the Nation, Congress shall determine what public official shall then act as President, until the cause of inability shall have ceased or a new President shall have been elected.<sup>5</sup>

<sup>5</sup> Law of September 19, 1868:

Art. 1. In case of vacancy of both the Presidency and Vice-Presidency of the Nation, the Executive Power shall be discharged in the first place, by the President pro tempore of the Senate, in the second, by the President of the

**76.** In order to be elected President or Vice-President of the Nation, it is necessary: to have been born in Argentine territory, or to be the son of a native citizen, if born in a foreign country; to belong to the Roman Catholic Apostolic faith; and to have all other qualifications required to be elected a Senator.

**77.** The term of office of the President and Vice-President shall be six years, and they cannot be re-elected until after an interval of one term.

**78.** The President of the Nation ceases in power the very day on which his term of six years expires, and no event of any nature whatsoever which may have interrupted it shall be a cause for his completing it afterwards.

**79.** The President and Vice-President shall receive a salary to be paid out of the treasury of the Nation and which cannot be changed during the term for which they have been elected. During such term they shall not be permitted to fill any other office or receive any other emolument from the Nation or any Province whatsoever.

**80.** Upon entering on the execution of their offices, the President and Vice-President shall take an oath to be administered by the President of the Senate (the first time, by the President of the Constituent Congress), with Congress in session, in the following terms:

"I....., do swear, before God our Lord and by these Holy Gospels, to execute with loyalty and patriotism the office of President (Vice-President), and faithfully to observe and enforce the observance of the Constitution of the Argentine Nation. Should I fail to do so, may God and the Nation demand it of me."

Chamber of Deputies, and in the absence of either of these, by the President of the Supreme Court.

**Art. 2.** Thirty days before the closing of the ordinary session, each Chamber shall choose its President for the purposes of this law.

**Art. 3.** The official called on to discharge the National Executive Power in the cases of Article 1, shall, if the inability of the President and Vice-President is permanent, call on the people of the Republic to hold a new election for President and Vice-President within thirty days after taking his seat.

**Art. 4.** The official who is to exercise the Executive Power in the cases of Article 1 of this law shall, upon entering on the discharge of his duties, take the oath prescribed by Article 80 of the Constitution, before Congress, and, in its absence, before the Supreme Court of Justice.

## CHAPTER II.

### **Of the Form and Time of Electing the President and Vice-President of the Nation.**

**81.** The election of President and Vice-President of the Nation shall be made in the following manner: The capital and each of the Provinces shall appoint, by direct vote, a board of electors equal to double the whole number of Deputies and Senators they send to Congress, with the same qualifications and under the same forms as prescribed for the election of Deputies.

Neither Deputies, Senators, nor salaried employees of the Federal Government can be electors.

Upon the meeting of the electors in the Capital of the Nation and in that of their respective Provinces four months before the end of the term of the outgoing president, they shall proceed to elect a President and Vice-President of the Nation, by signed ballots, stating in one the person for whom they vote for President and in another different one the person they choose for Vice-President.

Two lists shall be made of all persons chosen for President, and two more of those named for Vice-President, with the number of votes cast in favor of each. These lists shall be signed by the electors, and two of them (one of each class) shall be sent under closed and sealed cover to the President of the Provincial Legislature, and in the Capital, to the President of the municipality, in whose archives they shall remain deposited under lock and key; and the other two to the President of the Senate (the first time to the President of the Constituent Congress).

**82.** The President of the Senate (the first time, the president of the Constituent Convention), after all the lists have been assembled, shall open them in the presence of the two Chambers. In association with the Secretaries, four members of Congress, selected by lot, shall proceed immediately to count the votes and announce the number of votes in favor

of each candidate for President or for Vice-President of the Nation. Those receiving in each case an absolute majority of all the votes shall be immediately proclaimed President and Vice-President.

**83.** If, by reason of the division of the vote, there is no absolute majority, Congress shall choose between the two persons who have received the highest number of votes. If the highest majority obtained proves to be in favor of more than two persons, Congress shall choose from among all of them.

If the highest majority obtained proves to be in favor of only one person, and the next highest in favor of two or more, Congress shall choose from among all the persons who have obtained the highest and next highest majorities.

**84.** This election shall be made by absolute plurality of votes and on roll-call. If no absolute majority results on the first ballot, a second vote shall be taken, limited to the two persons who obtained the highest number of votes on the first ballot. In case of tie, another vote shall be taken, and if it again results in a tie, the President of the Senate (the first time the President of the Constituent Congress) shall cast the deciding vote. Neither the counting of the votes nor the rectification of these elections shall be effected without three-fourths of the total number of members of the Congress being present.

**85.** The election of President and Vice-President of the Nation must be concluded at a single sitting of Congress, and the result thereof and the electoral proceedings shall be published immediately in the Press.

### **CHAPTER III.**

#### **Powers and Duties of the Executive Power.**

**86.** The President of the Nation has the following powers and duties:

1. He is the Supreme Head of the Nation and has charge of the general administration of the country.

2. He shall issue the instructions and regulations necessary for the execution of the laws of the Nation, but shall see that such regulations do not alter their spirit.

3. He is the immediate local head of the Capital of the Nation.

4. He participates in making the laws in accordance with the Constitution, and sanctions and promulgates them.

5. He appoints the justices of the Supreme Court and the magistrates of other inferior Federal Tribunals, with the concurrence of the Senate.

6. He may grant pardons or commute penalties for crimes subject to federal jurisdiction, after obtaining a report from the proper tribunal, except in cases of impeachment by the Chamber of Deputies.

7. He may grant retirements, both civil and military, leaves of absence, and pensions in pursuance of the laws of the Nation.

8. He exercises the rights of the National Patronage in the presentation of Bishops to Cathedral Churches, on the recommendation in ternary of the Senate.

9. He grants or refuses passage to the decrees of the councils, bulls, briefs, and rescripts of the Supreme Pontiff of Rome, with the concurrence of the Supreme Court; a law being required when they contain general provisions of a permanent character.

10. He appoints and removes, with the concurrence of the Senate, Ministers Plenipotentiary and Chargés d'Affaires; and he alone appoints and removes the cabinet ministers, the officials of the executive departments, consular agents, and other employees of the Administration, whose appointment is not otherwise provided for by this Constitution.

11. He opens the sessions of Congress every year, with both Chambers assembled for this purpose in the Senate Hall, on which occasion he shall report to Congress on the state of the Nation, on the reforms promised by the Constitution, and recommend to their consideration such measures as he shall judge necessary and expedient.



12. He adjourns the ordinary sessions of Congress, or convenes it in extraordinary session, when some grave interest of order or progress so requires.

13. He causes the revenues of the Nation to be collected and decrees their disbursement in accordance with the law or budgets of national expenses.

14. He concludes and signs treaties of peace, commerce, navigation, alliance, limits and neutrality, concordats, and all other arrangements or agreements required for the maintenance of friendly relations with foreign powers; he receives their Ministers and admits their Consuls.

15. He is the commander-in-chief of all the land and naval forces of the Nation.

16. He fills all the military offices of the Nation, with the concurrence of the Senate, when filling higher offices and grades in the Army or Navy, and by himself on the field of battle.

17. He controls the land and naval forces and has charge of their organization and distribution according to the needs of the Nation.

18. He declares war and grants letters or marque and reprisal with the authorization and approval of Congress.

19. He may declare in a state of siege one or more sections of the Nation in case of foreign attack, for a limited period, with the concurrence of the Senate. In cases of domestic disturbance, he shall have this power only when Congress is in recess, such power being vested in this body. The President exercises it with the limitations prescribed by Article 23.

20. He may call on the heads of all the branches and Departments of the Administration, and through them, on all other employees, for such reports as he may deem advisable, and they shall be required to furnish them.

21. He cannot absent himself from the territory of the capital, without the permission of Congress. During the latter's recess, he may do so without permission, when necessary owing to some grave object of the public service.

22. The President shall have the power to fill vacancies in offices which require the concurrence of the Senate, occur-

ring while it is in recess, by temporary appointments which shall expire at the close of the next Congress.

## CHAPTER IV.

### Of the Ministers of the Executive Power.

**87.** Five Ministerial Secretaries, namely, — Of the Interior, of Foreign Relations, of Finance, of Justice, Worship and Public Instruction and of War and Marine, — shall have charge of the despatch of the affairs of the Nation, and shall countersign and legalize all acts of the President by their signature, without which requisite such acts shall not be valid. The scope of the business of each Minister shall be determined by law.<sup>6</sup>

**88.** Each Minister is personally liable for the acts he legalizes, and solidarily liable for those in which he concurs with his colleagues.

**89.** Ministers can in no case take action by themselves, excepting as to matters concerning the economic and administrative government of their respective Departments.

**90.** As soon as the sessions of Congress are opened, each Cabinet Minister shall present to it a detailed report of the state of the Nation, in so far as the business of his respective Department is concerned.

**91.** They cannot be Senators or Deputies without first resigning their offices as Ministers.

**92.** The Ministers may attend the sessions of Congress and take part in the debates, but not vote.

**93.** They shall receive for their services a salary to be established by law, which shall not be increased or reduced in favor or against them during their continuance in office.

<sup>6</sup> This article was amended March 15, 1898, as follows:

Eight Ministerial Secretaries shall have charge of the dispatch of the affairs of the Nation, and shall countersign and legalize all acts of the President by their signature, without which requisite such acts shall not be valid. A special law will determine the scope of the business of each Department.

### **SECTION III. OF THE JUDICIAL POWER.**

#### **CHAPTER I.**

##### **Of Its Nature and Duration.**

**94.** The Judicial Power of the Nation shall be vested in a Supreme Court of Justice and in such other inferior tribunals as Congress may establish in the territory of the Nation.

**95.** In no case can the President of the Nation exercise judicial functions, assume jurisdiction of pending causes, or reopen such as have already been closed.

**96.** The justices of the Supreme Court and of the inferior tribunals of the Nation shall hold their offices during good behavior, and shall receive for their services a compensation to be fixed by law, which shall not be diminished in any manner whatsoever during their continuance in office.

**97.** No one can be a member of the Supreme Court of Justice who is not a lawyer of the Nation, with eight years' practice, and who does not have the qualifications required to be a Senator.

**98.** When the Supreme Court assembles for the first time, the persons appointed thereto shall take an oath, to be administered by the President of the Nation, to discharge their duties by the proper and legal administration of justice and in pursuance of the provisions of the Constitution. Thereafter the oath shall be administered by the President of said Court.

**99.** The Supreme Court shall make its own internal and economic regulations, and shall appoint all its subordinate employees.

#### **CHAPTER II.**

##### **Powers and Duties of the Judicial Power.**

**100.** The Supreme Court and the inferior tribunals of the Nation shall take cognizance of and decide all causes involving

points governed by the Constitution and the laws of the Nation, with the exception provided for by subdivision 11 of Article 67, and by treaties with foreign nations; causes affecting foreign Ambassadors, public ministers, and consuls; causes of admiralty and maritime jurisdiction; matters to which the Nation is a party; causes arising between two or more Provinces; between a Province and citizens of another Province; between citizens of different Provinces; and between a Province or its citizens against a foreign State or citizen.

**101.** In these cases the Supreme Court shall have appellate jurisdiction according to the rules and exceptions prescribed by Congress; but in all matters concerning foreign Ambassadors, ministers, or consuls, and in cases in which a Province is a party, it shall have original and exclusive jurisdiction.

**102.** The trial of all ordinary crimes, other than those arising out of the right of impeachment granted to the Chamber of Deputies, shall be by jury, as soon as this institution shall be established in the Republic. Such trials shall be held in the Province in which the crime was committed; but when committed without the limits of the Nation, against international law, Congress shall determine by a special law the place where the trial is to be held.

**103.** Treason against the Nation shall consist only in taking up arms against it, or in adhering to its enemies, giving them aid and comfort. Congress shall establish the punishment for this crime by a special law; but such punishment shall not extend beyond the person of the offender, nor shall the infamy of the criminal be transmitted to his relatives in any degree.

## **TITLE II. PROVINCIAL GOVERNMENTS.**

**104.** The Provinces retain all the power not delegated by this Constitution to the Federal Government, and that

which they may have expressly reserved by special agreements at the time of their incorporation.

**105.** They shall provide their own institutions and be governed thereby. They elect their Governors, their legislators, and other Provincial officials, without the intervention of the Federal Government.

**106.** Each Province shall enact its own Constitution, in accordance with the provisions of Article 5.

**107.** The Provinces may conclude partial treaties for the purposes of the administration of justice, economic interests, and works of common utility, with the knowledge of the Federal Congress; and promote their industries, immigration, the construction of railways and navigable canals, the colonization of lands of Provincial ownership, the introduction and establishment of new industries, the importation of foreign capital and the exploration of their rivers, by protective laws, and with their own resources.

**108.** The Provinces do not exercise the power delegated to the Nation. They cannot conclude partial treaties of a political character; or enact laws relating to inland or foreign commerce or navigation; or establish Provincial customhouses or coin money; or establish banks with the power to issue notes, without authorization from the Federal Congress; or civil, commercial, penal, or mining codes, after Congress shall have sanctioned them; or enact special laws on citizenship and naturalization, bankruptcy, counterfeiting of money, or State securities; or establish tonnage dues; or arm men-of-war or raise armies—except in case of foreign invasion or a danger so imminent as to admit of no delay, reporting the matter at once to the Federal Government; or appoint or receive foreign agents; or admit new religious orders.

**109.** No Province shall declare or wage war against another Province. Their complaints shall be submitted to the Supreme Court of Justice and settled by it. Acts of hostility on their part shall be deemed acts of civil war, and classified as seditious or riotous, which the Federal Government shall put down and repress according to law.

**110.** The Governors of the Provinces are the natural agents of the Federal Government for the enforcement of this Constitution and the laws of the Nation.

*Chamber of Sessions of the National Convention, in the City of Santa Fe, the twenty-fifth day of the month of September, eighteen hundred and sixty.*



# THE CIVIL CODE OF THE ARGENTINE REPUBLIC.

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SANCTIONED BY CONGRESS, SEPTEMBER 29, 1869, AS  
CORRECTED BY THE LAW OF SEPTEMBER 9, 1882.

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## PRELIMINARY TITLES.

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### TITLE I. OF THE LAWS.

**Article 1** [1]. The laws are binding upon all the inhabitants of the territory of the Republic, whether citizens or foreigners, domiciled or transient.

**2** [2]. Laws are not binding until after their publication, and from the date which may be determined therein. If it fix no time, a law published in the capital of the Republic or in the capital of a Province is binding from the day following that of its publication; in the outlying departments, eight days after its publication in the capital city of the State or the capital of the Province.

**3** [3]. Laws provide for the future; they have no retro-active effect nor can they alter acquired rights.

**4** [4]. Laws, the object of which is to explain or interpret other laws, have no effect with regard to cases already adjudged.

**5** [5]. No person can have irrevocable rights in conflict with a law concerning the public order.

**6** [6]. The capacity or incapacity of persons domiciled in the territory of the Republic, whether nationals or foreigners, is governed by the laws of this Code, even though acts performed or property situated in a foreign country are involved.



7 [7]. The capacity or incapacity of persons domiciled without the territory of the Republic is governed by the laws of their respective domicile, even though acts performed or property situated in the Republic are involved.

8 [8]. Acts, contracts entered into and rights acquired without the place of the domicile of the person, are governed by the laws of the place where they were executed; but they shall not be carried out in the Republic, as to property situated in the territory thereof, if they do not conform to the laws of the country which govern the capacity, status and condition of the parties.

9 [9]. Incapacities contrary to the laws of nature, such as slavery, or those which partake of a penal character, are merely territorial.

10 [10]. Real property situated in the Republic is governed exclusively by the laws of the country, with respect to its character as such, the rights of the parties, the capacity to acquire the same, the modes of transferring it, and the formalities which must attend such acts. The title to real property, therefore, can be acquired, conveyed, or lost only in accordance with the laws of the Republic.

11 [11]. Movables permanently situated and which are held without the intention of removing them, are governed by the laws of the place where they are located; but movables which the owner always carries with him, or which are for his personal use, whether he be in his domicile or not, as well as those which are kept to be sold or carried to another place, are governed by the laws of the domicile of the owner.

12 [12]. The forms and formalities of contracts and of all public instruments are governed by the laws of the country in which they were executed.

13 [13]. The application of foreign laws, in the cases in which such application is authorized by this Code, shall never take place except at the instance of an interested party, upon whom the burden of proof of the existence of such laws shall lie. Herefrom are excepted such foreign laws as may be made binding in the Republic by diplomatic conventions, or by virtue of a special law.

**14 [14].** Foreign laws are not applicable:

1. Whenever their application is contrary to the public or criminal law of the Republic, the religion of the State, the tolerance of worship, or morality or good customs.

2. Whenever their application is incompatible with the spirit of the legislation embodied in this Code.

3. Whenever they are of mere privilege.

4. Whenever the laws embodied in this Code, in conflict with the foreign laws, are more favorable to the validity of the acts involved.

**15 [15].** Judges cannot decline to render judgment under the pretext of the silence, obscurity or insufficiency of the laws.

**16 [16].** If a civil question cannot be decided, either by the words or the spirit of the law, the principles of analogous laws shall be followed, and if the question should still remain doubtful, it shall be settled according to the general principles of law, taking into consideration the circumstances of the case.

**17 [17].** Laws cannot be repealed, either in whole or in part, except by other laws. Usage, custom, or practice cannot create rights, unless the laws make reference thereto.

**18 [18].** Acts prohibited by the laws are void, if the law does not prescribe any other effect in case of its violation.

**19 [19].** A general waiver of the laws does not produce any effect whatsoever; but the rights conferred thereby may be waived provided individual interests only are involved and the waiver thereof is not prohibited.

**20 [20].** Ignorance of the law does not serve as an excuse, if the exception <sup>1</sup> is not expressly authorized by the law.

**21 [21].** Private agreements cannot annul the effect of laws in the observance of which public order and good customs are involved.

**22 [22].** What is not expressly or impliedly provided in any article of this Code cannot have the force of law in the civil law, even though a similar provision shall have been previously in force, either by a general law, or by a special law.

<sup>1</sup> The exception of the Civil Law is the defense of the Common Law.

## TITLE II. OF THE MANNER OF COMPUTING INTERVALS OF TIME IN THE LAW.

**23 [23].** For all legal purposes, days, months and years shall be computed according to the Gregorian calendar.

**24 [24].** A day is the full interval of time between midnight and midnight; and terms of days shall not be counted from moment to moment, nor by hours, but from midnight of the day upon which their date ends.

**25 [25].** Terms of one or more months, or of one or more years, end on the day that the respective months have the same number of days from their date. Thus, a term beginning the fifteenth of a month, ends the fifteenth day of the corresponding month, whatever number of days the months or the year may have.

**26 [26].** If the month in which a term of months or years is to begin contains more days than the month in which the term is to end, and if the term runs from one of the days wherein the former of said months exceeds the latter, the last day of the latter month shall be the last day of the term.

**27 [27].** All terms shall be continuous and complete, and shall always end at midnight of the last day; and thus, acts which are to be performed *in* or *within* a certain term are valid if performed before midnight when the last day of the term ends.

**28 [28].** The terms which the laws or the courts, or the decrees of the Government may prescribe, shall include holidays, unless the term fixed relates to working days and such fact is stated.

**29 [29].** The provisions of the preceding articles shall apply to all the terms prescribed by the laws, by courts, or by the parties to juridical acts, in the absence of a provision to the contrary in the laws or in the said acts.

# **BOOK I.**

## **OF PERSONS.**

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### **SECTION I. OF PERSONS IN GENERAL.**

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#### **TITLE I. OF JURISTIC PERSONS.**

**30 [30].** All beings able to acquire rights or to contract obligations are persons.

**31 [31].** Persons are of ideal existence or of visible existence. They may acquire the rights, or contract the obligations which this Code regulates, in the cases, in the manner, and in the form determined therein. Their capacity or incapacity arises out of this power which the laws grant or deny them in the specific cases.

**32 [32].** All beings capable of acquiring rights, or contracting obligations, which are not persons of visible existence, are persons of ideal existence, or juristic persons.

**33 [33].** The juristic persons, with relation to which this Code legislates, are those which, from a necessary existence, or from a possible existence, are created for a purpose of convenience to the people, and are the following:

1. The State.
2. Each of the Federated Provinces.
3. Each of their municipalities.
4. The Church.
5. Institutions of public utility, religious or pious, scientific or literary institutions, corporations, religious communities, colleges, universities, joint stock companies, banks, insurance companies, and any other associations the principal object of which is the public welfare, provided they possess their own estate and are capable, under their by-laws, of

acquiring property, and are not supported by State appropriations.

**34 [34].** Foreign States, each of their provinces or municipalities, establishments, corporations, or associations existing in foreign countries, and existing therein under conditions similar to those set forth in the preceding article, are also juristic persons.

**35 [35].** Juristic persons may, for the purposes of their creation, acquire the rights which this Code establishes, and perform such acts as are not prohibited to them, through the representatives which the laws authorizing them or their by-laws have provided for.

**36 [36].** The acts of the legal representatives of juristic persons are considered acts of such persons, provided they do not exceed the limits of their powers. Such acts shall, in so far as the excess of power is concerned, be effective with respect to the mandataries only.

**37 [37].** If the powers of the mandataries are not expressly determined in the respective by-laws, or in the instruments which empower them to act, the validity of their acts shall be governed by the rules relating to mandates.

**38 [38].** Associations which have the character of juristic persons shall have an implied right to admit new members in the place of those who have died, or ceased to be such, provided the number fixed in their by-laws is not exceeded.

**39 [39].** Corporations, associations, etc., shall be considered as persons entirely distinct from their members. The property belonging to an association does not belong to any one of its members; and none of its members, nor all of them, are obliged to settle the debts of the association, unless they expressly bound themselves as sureties, or as joint debtors with it.

**40 [40].** The respective rights of the members of an association having the character of a juristic person, are governed by the contract, by the object of the association, or by the provisions of its by-laws.

**41 [41].** With regard to third persons, the institutions or corporations having the character of juristic persons enjoy

in general the same rights as ordinary individuals to acquire property, to take and hold possession thereof, to constitute real servitudes,<sup>2</sup> to receive the usufruct of property belonging to others, inheritances or legacies under testaments, donations by acts *inter vivos*, to create obligations and to institute civil or criminal actions, in the measure of their capacity in law.

42 [42]. Juristic persons may be made defendants in civil actions, and execution may be levied on their property.

43 [43]. No criminal or civil actions for the recovery of damages can be brought against juristic persons, even though their members collectively or their managers individually, have committed criminal offenses which redound to the benefit of said juristic persons.

44 [44]. National or foreign juristic persons have their domicile in the place in which they are situated, or where their main administrative or managing offices may be, when the matter involved is not one subject to a particular jurisdiction.

## CHAPTER I.

### Of the Beginning of the Existence of Juristic Persons.

45 [45]. The existence of corporations, associations, establishments, etc., which have the character of juristic persons, dates from the day they are authorized by the law or by the government, together with the approval of their by-laws, and in the case of religious corporations, by the confirmation of the prelates.

46 [46]. Associations which have no legal existence as juristic persons, are considered as mere civil, commercial or religious associations, according to the purpose of their creation.

<sup>2</sup> This term is used in lieu of the common law term *easement* not only because the latter is not the exact equivalent of *servitude*, but in order to be consistent in the use of civil law terms throughout this translation.

**47 [47].** In cases where the legal authorization of any association is subsequent to its establishment, its existence as a juristic person shall be legalized, with retroactive effect to the date of its establishment.

## **CHAPTER II.**

### **Of the End of the Existence of Juristic Persons.**

**48 [48].** The existence of corporations having the character of juristic persons terminates:

1. By their dissolution by resolution of their members, approved by the Government.

2. By their dissolution under a law, notwithstanding the will of their members, either by virtue of an abuse or infringement of the conditions or clauses of the legal authorization, or by reason of the observance of their by-laws having become impossible, or on account of their dissolution having become necessary or advisable in the public interest.

3. By the exhaustion of the property destined to their support.

**49 [49].** The existence of juristic persons is not terminated by the death of their members, even though the membership is reduced to such an extent as to render the fulfillment of the purpose of their creation impossible. It shall be the function of the government, if the by-laws have not provided therefor, to declare a corporation dissolved, or to determine the mode in which it is to be renewed.

**50 [50].** Upon the dissolution or termination of an association having the character of a juristic person, the property and rights of action which belonged to it shall be disposed of in the manner provided for in its by-laws; and if they should not have made any provision therefor, the property and rights of action shall be considered vacant and shall be applied to the objects which the legislative power may determine, without prejudice to third persons and the existing members of the corporation.

**TITLE II. OF PERSONS OF VISIBLE EXISTENCE.**

**51 [51].** All beings who show signs characteristic of human beings, without any distinction as to qualities or accidents, are persons of visible existence.

**52 [52].** Persons of visible existence are capable of acquiring rights or contracting obligations. All persons are so considered capable who are not expressly declared incapable in this Code.

**53 [53].** They are permitted to perform all acts and exercise all rights not expressly forbidden to them, independently of their condition as citizens and of their political capacity.

**54 [54].** The following are absolutely incapable:

1. Unborn children.
2. Impuberal minors.
3. Insane persons.
4. Deaf-mutes who are unable to make themselves understood in writing.
5. Absentees, so declared in judicial proceedings.

**55 [55].** The following are incapable as to certain acts or the manner of exercising them:

1. Adult minors.
2. Married women.

**56 [56].** Incapacitated persons may, nevertheless, acquire rights or contract obligations through the necessary representatives which the law gives them.

**57 [57].** The following are the representatives of incapacitated persons:

1. Of unborn children: their parents, and in the event of the absence or incapacity of the latter, the curators<sup>3</sup> who may be appointed to them.
2. Of impuberal or adult minors: their tutors.<sup>4</sup>
3. Of insane persons, deaf-mutes, or absentees: their parents, and in the event of the absence or incapacity of the latter, the curators who may be named to them.
4. Of married women: their husbands.

<sup>3</sup> See Art. 502 [468] et seq.

<sup>4</sup> See Art. 411 [377] et seq.



**58** [58]. This Code protects incapacitated persons, but solely for the purpose of overcoming the impediments of their incapacity, by giving them the representation prescribed herein, and without granting them the benefit of restitution, or any other benefit or privilege.

**59** [59]. In addition to the necessary representatives, incapacitated persons are represented promiscuously by the Department of Minors (*Ministerio de Menores*), which shall be a legitimate and essential party to every judicial or extrajudicial proceeding, whether of voluntary or contentious jurisdiction, in which the incapacitated persons are plaintiffs or defendants, or in which their persons or property are involved, under the penalty of the nullity of all acts and of all proceedings which are had without its participation.

**60** [60]. Married women are excepted from the representations set forth in the foregoing article.

**61** [61]. When the interests of incapacitated persons in any judicial or extrajudicial proceeding are in conflict with those of their representatives, the latter shall not take part in said acts, and special curators shall act in their places in the case in question.

**62** [62]. The representation of incapacitated persons extends to all acts of civil life, not excepted in this Code.

### TITLE III. OF UNBORN PERSONS.

**63** [63]. Unborn persons are those who, not having been born, are conceived in the maternal womb.

**64** [64]. Unborn persons shall be represented by other persons whenever it becomes necessary for them to acquire property by donation or inheritance.

**65** [65]. The pregnancy of the mother shall be considered as admitted, upon the mere statement of herself or of her husband, or of other interested parties.

**66** [66]. Interested parties for this purpose are:

1. The relatives in general of the unborn child, and all those persons to whom the property is to belong if the birth

does not occur, or if the child is not born alive, or if before the birth it is ascertained that the child had not been conceived within the proper time.

2. The creditors of the estate.

3. The Department of Minors.

**67** [67]. The parties interested cannot, even though they fear a supposititious birth, institute any proceedings whatsoever with respect to the matter, without prejudice, however, to their right to demand the police measures which may be necessary. Nor can they institute any action whatsoever questioning the filiation of the unborn child, as such questions must remain reserved until after the birth.

**68** [68]. Nor can a woman who is pregnant or so reputed institute proceedings to question the pregnancy declared by the husband or by interested parties, and her denial thereof does not bar the representation prescribed in this Code.

**69** [69]. The representation of unborn persons terminates the day of the parturition, if the child is born with life, and the representation of minors shall begin then, or before the parturition if the longest period of duration of pregnancy according to the provisions of this Code, has expired.

#### **TITLE IV. OF THE EXISTENCE OF PERSONS BEFORE BIRTH.**

**70** [70]. The existence of persons begins from the moment of conception in the maternal womb; and before their birth they may acquire certain rights, as if they were already born. These rights shall be irrevocably acquired if the unborn children are born with life, even though it be but for a few instants after their separation from their mother.

**71** [71]. If born with life, no distinction shall be made between a spontaneous birth and one brought about by a surgical operation.

**72 [72].** Nor shall it matter whether the persons born with life are unable to prolong it, or die after birth, owing to an internal organic defect, or on account of premature birth.

**73 [73].** A birth with life shall be considered certain, when the persons present at the birth heard the respiration or voice of the children, or observed other signs of life.

**74 [74.]** If they should die before their complete separation from the maternal womb, they shall be considered as if they had never existed.

**75 [75].** In case of doubt as to whether they were born with or without life, the presumption is that they were born with life, the burden of proof being on the person alleging the contrary.

**76 [76].** The period of the conception of persons born alive is hereby fixed to cover the entire interval of time comprised between the maximum and minimum term of the duration of pregnancy.

**77 [77].** The maximum period of pregnancy is presumed to be three hundred days, and the minimum one hundred and eighty days, excluding the day of birth. Evidence against this presumption is inadmissible.

**78 [78].** A judicial inquiry into the state of pregnancy shall never take place, nor other measures such as placing the pregnant woman in the custody or care of another, nor an inquiry into the birth at the time thereof nor after it took place, neither on the petition of the woman herself before or after the death of her husband, nor on the petition of such husband or of interested parties.

## **TITLE V. OF THE PROOF OF THE BIRTH OF PERSONS.**

**79 [79].** The date of birth, with the circumstances of place, sex, name, surname, paternity, and maternity shall be proved in the following form:

**80 [80].** Of persons born in the Republic, by authentic certificates of the records in the public registries, which to

this end are to be created by the municipalities,<sup>5</sup> or by the records in the parish books, or by the means which the National Government in the capital, and the provincial governments shall determine in their respective regulations.

**81 [81].** Of persons born on the high seas, by authentic copies of the records which the clerks of men-of-war and the captains or masters of merchant vessels are required to make on the occasion of such occurrences, in the form prescribed by the respective laws.

**82 [82].** Of nationals born in a foreign country, by the certificates of the records in consular registries, or by the instruments drawn at the place of birth, according to the respective laws, duly authenticated by the consular or diplomatic agents of the Republic.

**83 [83].** Of foreigners in the country of their nationality or in some other foreign country, by the means set forth in the next preceding article.

**84 [84].** Of the children of soldiers in a campaign outside of the Republic, or of persons employed in the service of the army, by certificates of the records in the respective registries, as may be determined in the military regulations.

**85 [85].** In the absence of the public registries, or in the absence of records therein, or in the event of the records therein not being in proper form, the date of birth, or at least the month or year thereof, may be established by other documents or by other means of proof.

**86 [86].** If the certificates of the records in the aforesaid registries are in proper form, the correctness thereof is presumed, reserving, however, to the persons interested the right to impugn either in whole or in part the declarations contained in said documents, or the identity of the person referred to in said documents.

**87 [87].** In the absolute absence of proof of age, by any of the means prescribed, and when the determination of age is essential, it shall be decided by the physiognomy, as judged by physicians to be appointed by the judge.

<sup>5</sup>See Art. 270 (113) of the Law of Civil Marriage, whereby the "respective legislatures" is substituted for "municipalities."

**88** [88]. If more than one child is born alive at a single birth, the children born are considered as of the same age and as having the same rights in cases of institution (of heirs) or substitution in the place of the elder children.

## **TITLE VI. OF DOMICILE.**

**89** [89]. The actual domicile of persons is the place where they have established their principal place of residence and business. The domicile of origin is the place of the domicile of the father, on the day of the birth of the children.

**90** [90]. The legal domicile is the place where the law presumes, without evidence to the contrary being admissible, that a person resides permanently for the exercise of his rights and the fulfillment of his obligations, even though not actually there present, thus:

1. Public officials, ecclesiastic or secular, have their domicile in the place where they are to discharge their functions, provided such functions are not temporary, periodical or mere commissions.

2. Soldiers in active service have their domicile in the place where they are on service, unless they declare their intention to the contrary, selecting some permanent establishment, or their principal place of business elsewhere.

3. The domicile of corporations, establishments and associations authorized by law or by the government, is the place where their administrative or managing offices are situated, if under their by-laws or the authorization given them they do not have a stated domicile.

4. Companies which have a number of establishments or branches, have their special domicile in the place where such establishments are situated, solely for the performance of the obligations there contracted by the local agents of the company.

5. Transients or persons engaged in ambulatory occupations, as well as persons having no known domicile, have their domicile in the place of actual residence.

6. Incapacitated persons have the domicile of the persons representing them.

7. The former domicile of a deceased person determines the place where his succession is opened.

8. Persons of full age, who serve, or work in, or who are members of the household of another, have the domicile of the person they serve, or for whom they work, provided they reside in the same house, or in accessory rooms, with the exception of a married woman, who as a laborer or domestic, lives in a house not her husband's.

9. A married woman has the domicile of her husband, even though she be elsewhere with his permission. A woman separated from her husband by a competent authority, retains the domicile of the husband, unless she has acquired another. A widow retains the domicile which her husband had, as long as she does not establish herself elsewhere.

91 [91]. The duration of a legal domicile is dependent upon the existence of the act which gives rise thereto. Upon the cessation of the cause, the domicile is governed by residence, with the intention of remaining permanently in the place of abode.

92 [92]. In order for the place of abode to be considered a domicile, the residence must be habitual and not accidental, even though there be no intention of settling in such place permanently.

93 [93]. In the case of an alternative place of abode in different places, the domicile is the place where the family resides, or where the principal establishment is located.

94 [94]. If a person has established his family in one place, and his business in another, the former is the place of his domicile.

95 [95]. Involuntary residence on account of banishment, imprisonment, etc., does not change the former domicile, if the family or the principal place of business be maintained there.

96 [96]. The moment that domicile in a foreign country is abandoned, without the intention of returning thereto, the person has the domicile of his birth.

**97 [97].** Domicile may be changed from one place to another. This power cannot be restricted either by contract or a disposition of last will. The change of domicile is effected instantly by the fact of the transfer of residence from one place to another, with the intention of remaining there permanently and having one's principal establishment in such place.

**98 [98].** The last known domicile of a person is that which prevails, when the new domicile is unknown.

**99 [99].** A domicile is retained by the mere intention of not changing it, or of not adopting another.

**100 [100].** The legal domicile and the actual domicile govern the jurisdiction of the public authorities, for the recognition of rights and the enforcement of obligations.

**101 [101].** Persons may in their contracts select a special domicile for the performance of their obligations.

**102 [102].** The selection of a domicile implies the extension of the jurisdiction which was vested exclusively in the judges of the actual domicile of the persons.

## **TITLE VII. OF THE END OF THE EXISTENCE OF PERSONS.**

**103 [103].** The existence of persons terminates by their natural death. Civil death does not take place in any case, neither by the imposition of a penalty, nor by taking vows in religious communities.

**104 [104].** The death of persons, occurring within the Republic, on the high seas, or in a foreign country, is proved as birth is in like cases.

**105 [105].** The death of soldiers killed in battle, with regard to whom it was not possible to make a record, by the records of the War Department.

**106 [106].** That of persons dying in convents, barracks, prisons, forts, hospitals or pest houses, by the respective records, without prejudice to general proofs.

**107 [107].** That of soldiers within the Republic or on a campaign, and that of persons in the service of the army, by the certificates of the entries in the respective hospital or ambulance registries.

**108 [108].** In the absence of the aforementioned documents, proof of the death of persons may be supplied by other documents setting forth the fact of the death, or by the testimony of witnesses to that effect.

**109 [109].** If two or more persons have died in a common disaster, or under any other circumstances, in such manner as to make it impossible to ascertain which of them died first, the presumption is that they all died at the same time, and no transmission of rights whatsoever between them can be set up.

## **TITLE VIII. OF ABSENTEES WITH THE PRESUMPTION OF DEATH.**

**110 [110].** The absence of a person from the place of his domicile or residence in the Republic, whether he left representatives or not, without any news having been received from such person for a term of six years, raises a presumption of his death.

**111 [111].** The six years shall be reckoned from the day of his absence, if no news of the absentee has ever been received, or from the date of the last news had of him.

**112 [112].** The disappearance of a person domiciled or residing in the République, who was seriously wounded in an engagement in war, or shipwrecked in a vessel lost or given up as lost, or who was at the scene of a fire, earthquake or other similar event, in which a number of persons lost their lives, without any news of such persons having been received for three consecutive years, also raises a presumption of death. The three years shall be reckoned from the date of the event, if known, or from a period half way between the beginning and the end of the period when the event occurred, or could have occurred.



**113** [113]. In the cases of the preceding articles, the spouse of the absentee, the presumptive legal heirs, those so instituted in an open testament, or the legatees, the persons entitled to the property held by the absentee, or those having some interest in his property subordinated to the condition of his death, the department of public prosecution (*ministerio fiscal*), and the respective consul, if the absentee is a foreigner, may petition the judge of the last domicile or residence of the absentee to make a judicial declaration of the presumptive day of the death of said absentee.

**114** [114]. The persons applying for this declaration must prove the time of the absence, the unsuccessful measures they have taken to ascertain the existence of the absentee, their right to succeed him, and, in a proper case, the occurrence of the shipwreck, earthquake, engagement, etc., at which the absentee was present.

**115** [115]. The judge must appoint counsel to represent the absentee and a curator for his property, if there is no administrator thereof, and cite the absentee through the newspapers every month, for a period of six months.

**116** [116]. After the expiration of said six months, and the admission of the evidence presented by the persons who have applied for the declaration of the presumptive day of the death of the absentee, the judge, after hearing counsel representing the absentee, shall declare the existence of the absence and fix the presumptive day of his death, and shall order the opening, if there be one, of the sealed testament left by him.

**117** [117]. In the case of Art. 110, the judge shall fix as the presumptive day of the death of the absentee, the last day of the first three years since his absence, or since the day the last news was received, and in the case of Art. 112, the day of the engagement, shipwreck, earthquake, etc., if known, and otherwise, a day half way between the beginning and the end of the period during which the event occurred or could have occurred.

**118** [118]. The presumptive day of the death having been fixed, the testamentary heirs, and in their absence, the legal heirs at the time of the presumptive death of the absentee,

or the heirs of the latter and the legatees, shall enter upon the provisional possession of the property of the absentee under a formal inventory and after furnishing bond for their proper administration. If they are unable to furnish bond, the judge may require the security which he deems proper, or place the property under the administration of a third person.

**119 [119].** The rights and obligations of a person who has obtained the provisional possession shall be the same as those of a curator of a person incapable of managing his property.

**120 [120].** If after the provisional possession has been conferred the absentee appears or authentic news of him is received, it shall be revoked.

**121 [121].** The presumptive heirs or the instituted heirs may, after the provisional possession has been conferred, make a provisional division of the property, without the right to alienate it, whether movable or real, without judicial authority.

**122 [122].** When fifteen years have passed since the disappearance of the absentee, or since authentic news of his existence was received, or eighty years since his birth, the judge may, on the petition of an interested party, grant the absolute possession of the property of the absentee to the instituted heirs, if there is a testament, and in the absence of a testament, to the heirs who were the presumptive heirs on the day of the presumptive death of the absentee, to the legatees, and to all persons having rights subordinate to the condition of his death.

**123 [123].** With the absolute possession, the conjugal partnership is terminated and may be liquidated.

**124 [124].** If the absentee appears after the absolute possession of his property has been granted, it shall be turned over to him in the condition in which it is, or such other property as may have been purchased with the proceeds of the sale thereof; but he cannot demand the value of the property consumed, nor the rents or interest received by the persons who have had the absolute possession.

**125** [125]. If the absentee left legitimate children whose existence was unknown, the latter may demand the property of the absentee, and it must be delivered to them, as in the case of the appearance of the absentee. The same shall be done in the event of the appearance of heirs instituted in a testament the existence of which was unknown, provided the heirs prove the actual death of the testator.

## TITLE IX. OF MINORS.

**126** [126]. Minors are persons of either sex who have not attained the age of twenty-two years.

**127** [127]. Impuberal minors are those who have not attained the age of fourteen years, and adult minors are those between the latter age and twenty-two years of age.

**128** [128]. The incapacity of minors ceases upon their attaining their majority, the day they attain twenty-two years of age, and upon their emancipation before attaining majority.

**129** [129]. Majority capacitates a person, from the day it begins, for the exercise of all acts of civil life, without the necessity of any formality<sup>6</sup> whatsoever nor authority from the parents, tutors, or judges.

**130** [130]. In order that minors who have attained their majority may enter upon the possession and administration of their property, when the delivery of such property is subject to the order of the judges, a mere submission by them of legal proof of age will be sufficient.

**131** [131]. The emancipation of minors, irrespective of sex, takes place only in the event of their marriage, also without the observance of any formality, whatever be the age at which they married, provided the marriage was celebrated with the necessary authorization, in accordance with the provisions of this Code.

<sup>6</sup>The official edition employs the word *personalidad* (personality), but it should be *formalidad* (formality). (Note of editor of Lajouane edition of Civil Code.)

**132 [132].** If the marriage is annulled, the emancipation shall be void from the date the judgment of annulment acquires the force of *res judicata*.

**133 [133].** Emancipation is irrevocable, and produces the effect of capacitating the married persons for all acts of civil life, even though the marriage is dissolved during their minority by the death of one of them, whether they have children or not.

**134 [134].** Minors emancipated by marriage cannot, under the penalty of nullity, approve the accounts of their tutors and discharge them, nor make donations of property of any kind whatsoever, by acts *inter vivos*, even with the authority of the Defender of Minors.

**135 [135].** Nor can they, under the penalty of nullity, sell or mortgage real property of any value whatsoever, without express authorization from the judge.

Nor sell the public revenues or securities which they have, nor their stock in commercial or industrial companies.

Nor contract debts exceeding five hundred *pesos* in amount.

Nor execute leases, as lessors or lessees, for terms exceeding three years.

Nor receive payments exceeding one thousand *pesos*.

Nor enter into transactions<sup>7</sup> or submit matters to arbitration.

Nor become parties to civil actions.

**136 [136].** Judicial authorization shall not be granted except in a case of absolute necessity or of evident advantage, and sales of their property shall always take place at a public auction.

**137 [137].** If something be given the minor with the stipulation that he is not to receive it until he has attained full age, his emancipation does not alter the obligation, nor the time of its demandability.

**138 [138].** A person changing his domicile from a foreign country to the territory of the Republic, who is of full age or an emancipated minor, according to the laws of this Code, is so considered even though he be a minor or not emancipated, according to the laws of his former domicile.

<sup>7</sup> See note to Art. 758 [724].

**139 [139].** But if he is already of full age or emancipated according to the laws of his former domicile, and not so under the laws of this Code, the former shall in such case prevail over the latter, majority or emancipation being considered an irrevocable act.

## **TITLE X. OF INSANE PERSONS.**

**140 [140].** No person is held to be insane, for the purposes determined in this Code, unless his insanity has been previously established and declared by a judge of competent jurisdiction.

**141 [141].** Persons of either sex who are in an habitual state of mania, dementia or imbecility, even though they have lucid intervals, or their mania be partial, are declared insane persons.

**142 [142].** A judicial declaration of insanity lies only on the petition of a party, and after an examination by physicians.

**143 [143].** If the examination of physicians shows insanity to be present, it must be classified according to its respective character, and if it consist of mania, it must be stated whether it is partial or total.

**144 [144].** The following may apply for a declaration of insanity:

1. A husband or wife who is not divorced.
2. The relatives of the insane person.
3. The Department of Minors.
4. The respective consul, if the insane person is a foreigner.
5. Any person in the town, when the insane person is violent, or a cause of annoyance to his neighbors.

**145 [145].** If the insane person is under fourteen years of age a declaration of insanity cannot be applied for.

**146 [146].** Nor can a declaration of insanity be applied for when a similar petition has been previously denied as not proved, even though another person makes the application, unless it set forth acts of insanity occurring after such judicial ruling.

**147 [147].** The petition for a declaration of insanity having been made, a temporary curator shall be appointed to the defendant as an insane person, to represent and defend him in the proceedings, until final judgment is rendered. The Department of Minors is a necessary party in these proceedings.

**148 [148].** When the insanity is a matter of public knowledge and beyond doubt, the judge shall immediately order that the property of the denounced insane person be collected, and delivered, under inventory, to a provisional curator for administration.

**149 [149].** If the person denounced as insane is a minor, his father or tutor shall exercise the functions of provisional curator.

**150 [150].** The termination of the incapacity by the complete recovery of insane persons shall take place only after a further inquiry into their sanity by physicians, and after a judicial declaration, with a hearing of the representative of the Department of Minors.

**151 [151].** A judgment relating to insanity or its cessation has the effect of *res judicata* in a civil action only, for the purposes set forth in this Code; but not in a criminal action, in order to bar criminal charges or to serve as a basis for a conviction.

**152 [152].** Nor shall a judgment in a criminal action which was not the basis for the charge of the insanity of the defendant, or whereby he was sentenced as if he were not insane, constitute *res judicata* in a civil action for the purposes referred to in the preceding articles.

## TITLE XI. OF DEAF-MUTES.

**153 [153].** Deaf-mutes are considered as incapacitated to perform the acts of civil life, if they are not able to make themselves understood in writing.

**154 [154].** In order to provide for the representation of deaf-mutes, proceedings shall be had as in the case of insane

persons; and after the official declaration, the provisions hereinbefore made regarding insane persons shall be observed.

**155** [155]. The sole purpose of the inquiry by physicians is to establish whether they are able to make themselves understood in writing or not.

**156** [156]. The same persons who have the right to apply for a judicial declaration of the incapacity of insane persons, may apply for a declaration of the incapacity of deaf-mutes.

**157** [157]. A judicial declaration does not lie unless deaf-mutes who have attained the age of fourteen years are involved.

**158** [158]. The incapacity of deaf-mutes terminates in the same way as that of insane persons.

## SECTION II. OF PERSONAL RIGHTS IN FAMILY RELATIONS.

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### TITLE I. OF MARRIAGE.<sup>8</sup>

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#### CHAPTER I.

##### Rules Governing Marriage.

**159 [2].<sup>9</sup>** The validity of a marriage, in the absence of any of the impediments established in subdivisions 1, 2, 3, 5 and 6 of Art. 166 [9], is governed in the Republic by the law of the place where it was celebrated, even though the contracting parties left their domicile in order not to subject themselves to the forms and laws there in force.

**160 [3].** The personal rights and obligations of the spouses are governed by the laws of the Republic as long as they remain therein, whatever be the country in which they contracted marriage.

**161 [4].** The nuptial contract governs the property of the marriage, whatever be the laws of the country in which the marriage was celebrated.

**162 [5].** In the absence of nuptial agreements, or a change in the matrimonial domicile, the law of the place where the marriage was celebrated governs the movable property of the spouses, no matter where it is or where it was acquired.

If a change of domicile has taken place, the property acquired by the spouses before such change is governed by the

<sup>8</sup> The Civil Marriage Law, in force since December 1, 1889, is incorporated in this Code in accordance with the provisions of Art. 118 of said law.

<sup>9</sup> This numeration of articles corresponds to that of the Civil Marriage Law. Article 1 is not mentioned as there is no reason to incorporate it herein. It provides: The Civil Code is hereby amended in the form and in accordance with the provisions of the following articles.



laws of the first domicile. The property acquired after the change is governed by the laws of the new domicile.

**163 [6].** Real property is governed by the law of the place where it is situated.

**164 [7].** The dissolution in a foreign country, of a marriage celebrated in the Argentine Republic, even though it conforms to the laws of such country, if it does not conform to the provisions of this Code, shall not enable either of the spouses to remarry.

## **CHAPTER II.**

### **Of Betrothments.**

**165 [8].** The law does not recognize betrothments. No court shall admit a complaint on the subject, nor for the recovery of damages caused thereby.

## **CHAPTER III.**

### **Of Impediments.**

**166 [9].** The following are impediments to marriage:

1. Consanguinity between ascendants and descendants without limitation, whether legitimate or illegitimate.

2. Consanguinity between brothers and sisters or half brothers and sisters, whether legitimate or illegitimate.

3. Affinity in a direct line in all degrees.

4. The fact of the woman not having attained the age of twelve and the man the age of fourteen years.

5. A former marriage, as long as it remains in force.

6. The fact of having been a voluntary principal or accomplice in the homicide of one of the spouses.

7. Insanity.

In the cases of subdivisions 1 and 2, the proof of the relationship is subject to the provisions of this Code.

**167 [10].** A woman over twelve years of age, and a man over fourteen, but still minors, and deaf-mutes unable to make themselves understood in writing, cannot intermarry nor marry other persons, without the consent of their legitimate father or of their natural father if he has acknowledged them, or without that of the mother in default of the father, or without that of the tutor or curator, in default of both, or without that of the judge, in default of the latter.

**168 [11].** The civil judge shall decide the causes of refusal to give consent, in chambers and merely as a matter of inquiry.

**169 [12].** A tutor and his legitimate descendants under his power cannot contract marriage with the minor, whether male or female, of which he was or is the tutor, until after the termination of his tutorship and the approval of the accounts of his administration. Should they do so, the tutor shall forfeit the allowance to which he would have been entitled from the income of the minor, without prejudice to his penal liability.

**170 [13].** If minors marry without the necessary authorization, they shall be denied the possession and management of their property until they attain their majority; there are no means whatever of supplying the absence of authorization.

## CHAPTER IV.

### Of Consent.

**171 [14].** The consent of the contracting parties, expressed in the presence of the public official in charge of the civil registry, is essential to the existence of marriage.

An act lacking any of these requisites does not produce any civil effects, even though the parties have acted in good faith.

**172 [15].** Consent may be expressed through an attorney in fact holding a special power of attorney specifically designating the person with whom his principal is to contract marriage.

**173 [16].** Violence, *dolus*, or error as to the identity of the physical individual or of the civil person vitiates consent.

## CHAPTER V.

### Of the Proceedings Preliminary to the Celebration of Marriage.

**174 [17].** Persons desiring to contract marriage shall appear before the public official in charge of the civil registry, in the domicile of either of them, and shall verbally declare their intention, which shall be embodied in an act <sup>10</sup> signed by the public official, by the future spouses and two witnesses; if the future spouses do not know how or are unable to sign, another person shall sign for them at their request.

**175 [18].** The act shall state:

1. The names and surnames of the persons desiring to marry.
2. Their age.
3. Their nationality, their domicile, and the place of their birth.
4. Their occupation.
5. The names and surnames of their parents, their nationality, occupation and domicile.
6. Whether they have been previously married or not, and in an affirmative case, the name and surname of their former spouse, the place of their marriage and the cause of the dissolution thereof.

**176 [19].** The future spouses must present on the same occasion:

1. A copy, duly authenticated, of the final decree annulling the marriage of either or of both of the future spouses, as the case may be.
2. An authentic declaration of the persons whose consent is required by the law, if they do not express their consent

<sup>10</sup> A writing which states in a legal form that a thing has been done, said or agreed. Merlin, Répert. in Bouvier, Law Dict.

verbally at said act, or the suppletory authority of the judge, when proper. The parents, tutors or curators who express their consent in the presence of the public official, shall sign the act referred to in Art. 174 [17]; if they do not know how or are unable to sign, one of the witnesses shall sign for them at their request.

3. Two witnesses who, by reason of their acquaintance with the parties, shall testify to their identity and that they believe them capable of contracting marriage.

## CHAPTER VI.

### Of Opposition.

**177 [20].** The only grounds which can be set up in opposition are the impediments established in this Code.

Any opposition which is not based on the existence of one or more of these impediments, shall be dismissed without further proceedings.

**178 [21].** The right to oppose the celebration of a marriage on account of the impediments set forth in Art. 166 [9] is vested:

1. In the spouse of the person desiring to contract marriage.

2. In the relatives of either of the future spouses, within the fourth degree of consanguinity or affinity.

3. In the tutors or curators.

4. In the representative of the government, who must make objection whenever he has knowledge of such impediments.

**179 [22].** If a widow desires to contract marriage in violation of the provisions of Art. 250 [93], the relatives of the husband in successible degree shall have the right to make opposition.

**180 [23].** Parents, tutors and curators may in addition make opposition on the ground of their consent not having been given.

**181 [24].** Parents, tutors and curators must state the grounds for their opposition; but parents are exempt from this obligation when a male child under eighteen years of age, or a female child under fifteen years of age is involved, except when they are enjoying the usufruct of their property.

Opposition may be founded only:

1. On the existence of one or more of the impediments mentioned in Art. 166 [9].

2. On a contagious disease of the person desirous of marrying the minor.

3. On the loose or immoral conduct of such person.

4. On the fact of such person having been convicted of robbery, theft, swindling, or any other crime to which is affixed a penalty of imprisonment for more than one year.

5. Lack of means of livelihood or the ability to earn it.

**182 [25].** The opposition must be made before the public official acting in the proceedings preliminary to the celebration of the marriage.

**183 [26].** The opposition may be made at any time after the initiation of the proceedings preliminary to the marriage and before its celebration.

**184 [27].** The opposition shall be made verbally or in writing, setting forth:

1. The name, surname, age, civil status, occupation and domicile of the party making the opposition.

2. His relationship to either of the future spouses.

3. The impediment on which he bases his opposition.

4. The grounds which lead him to believe that the impediment exists.

5. Whether he has documents or not which prove the existence of the impediment and a reference thereto.

If the opposition is made verbally, the public official shall draw up a detailed act which he shall subscribe, together with the opposing party and two witnesses, if the latter should not know how or be unable to sign. If the opposition is made in writing, it shall be transcribed in the book of acts with the same formalities.

**185 [28].** If the opposing party has documents, he must

present them at the same act. If he has none, he shall state where they are to be found, and shall describe them, if he is acquainted therewith.

**186 [29].** The opposition having been duly formalized, the future spouses shall be informed thereof by the public official upon whom it devolves to celebrate the marriage.

If either or both of them admit the existence of the legal impediment, the public official shall make this fact of record and shall not celebrate the marriage.

**187 [30].** If the opposition is not based on any legal impediment, the public official to whom it is made shall dismiss it of his own motion, and make a record thereof.

**188 [31].** If the future spouses do not admit the existence of the impediment, they shall so state before the public official within three days after service of the notice; said official shall draw up an act and transmit to the civil judge an authenticated copy of all the proceedings had, together with the documents presented, and suspend the celebration of the marriage.

**189 [32].** The civil courts shall hear any opposition that may be offered and determine it summarily with notice to the representative of the government and shall forward an authenticated copy of the decision to the public official.

**190 [33].** The public official shall not proceed to celebrate the marriage until the decision overruling the opposition has acquired the force of *res judicata*.

If the decision declares the existence of the impediment on which the opposition is based, the marriage cannot be celebrated; in either case, the public official shall enter in the margin opposite the record of the opposition, the adjudging portion of the decision.

**191 [34].** If the opposition is dismissed, the opposing party, if not an ascendant or the representative of the government, shall pay the future spouses an indemnity in an amount to be fixed by the courts taking cognizance thereof, in their discretion.

**192 [35].** Any person may denounce the existence of any of the impediments set forth in Art. 166 [9], incurring the liability which may lie if the denunciation is malicious.

**193 [36].** The denunciation having been formally filed, the public official shall forward it to the civil judge, who shall refer it to the representative of the government; the latter shall, within three days, either file his objection or state that he considers the denunciation to be unfounded.

## CHAPTER VII.

### Of the Celebration of the Marriage.

**194 [37].** The marriage must be celebrated before the public official in charge of the civil registry, in his office, publicly, the future spouses or their attorneys in fact in the case provided for in Art. 172 [15] appearing personally, in the presence of two witnesses and with the formalities prescribed by this law.

If either of the future spouses should be unable to go to the office, the marriage may be celebrated at his or her residence.

**195 [38].** If the marriage is celebrated in the office, the presence of two witnesses shall be necessary, and if celebrated at the residence of either of the spouses, four witnesses shall be required.

**196 [39].** The public official shall read to the future spouses at the act of the celebration of the marriage, Arts. 207 [50], 208 [51], and 210 [53] of this law, shall receive from each of them personally, one after the other, a declaration that they desire respectively to take each other for husband and wife, and shall pronounce them in the name of the law to be united in marriage.

The public official cannot object to the spouses, after having expressed their consent in his presence, having their union blessed at the same act by a minister of their religion.

**197 [40].** If the preliminary proceedings show, in the judgment of the public official in charge of the civil registry,

that the future spouses are able to marry, the celebration of the marriage shall be proceeded with at once, in order that everything may be embodied in a single act, which shall set forth in addition:

1. The declaration of the contracting parties that they take each other for man and wife, and that made by the public official to the effect that they are united in the name of the law.

2. The acknowledgment which the contracting parties may make of their natural children, if they have any, which they legitimate by their marriage.

3. The name, surname, age, civil status, occupation and domicile of the witnesses to the act, if they be different from those who testify to the capacity of the contracting parties.

4. A reference to the power of attorney, with a statement of the date, place, and notary public or public official before whom it was executed, if the marriage is celebrated by proxy, which qualifying instrument shall be filed in the office.

**198 [41].** If the preliminary proceedings do not result in proof of the capacity of the contracting parties to marry, or if opposition or a denunciation is filed, the public official shall suspend the celebration of the marriage until their capacity is established, the opposition overruled or the denunciation dismissed, the facts being embodied in an act of which he shall give a copy to the persons interested, if they so request, in order that they may have recourse to the civil judge.

**199 [42].** In the case of the preceding article, the act of the celebration of the marriage shall be made separately from that of the preliminary proceedings and shall set forth:

1. The date on which the act takes place.

2. The name and surname, age, occupation, domicile and birthplace of the contracting parties.

3. The name and surname, occupation, domicile and nationality of their respective parents, if known.

4. The name and surname of the predeceased spouse, when one of the spouses has been married before.

5. The consent of the parents, tutors or curators, or the suppletory consent of the judge in the cases in which it is required.



6. A statement as to whether there was any opposition or not, and the fact that it was overruled.

7. The declaration of the contracting parties that they take each other for husband and wife, and the declaration by the public official that they are united in the name of the law.

8. The acknowledgment by the contracting parties of their natural children, if they have any, whom they legitimate by their marriage.

9. The name, surname, age, civil status, occupation and domicile of the witnesses.

10. A mention of the power of attorney, with a statement of its date, and of the place and notary public or public official before whom it was executed, if the marriage is celebrated through an attorney-in-fact, said power of attorney being filed in the office.

**200** [43]. The act of the marriage shall be drawn up and signed immediately by all the persons taking part therein, or by others at the request of those who are unable or do not know how to sign.

**201** [44]. The declaration of the contracting parties that they respectively take each other for husband and wife, cannot be made subject to any term or condition whatsoever.

**202** [45]. The chief of the office of the civil registry shall deliver to the spouses an authenticated copy of the act of the marriage.

**203** [46]. The public official shall proceed to celebrate the marriage waiving all or some of the formalities which should precede its celebration, whenever it is established by a physician's certificate, and where there is no physician, by the testimony of two residents, that either of the future spouses is in danger of dying, and that they had stated that they desire to acknowledge natural children, which fact shall be embodied in the act. If there is any danger in delay, the marriage *in articulo mortis* may be celebrated before any judicial authority, who shall draw up an act of the celebration setting forth the circumstances mentioned in subdivisions 1, 2, 3, 4, 5, 7, 8, 9, and 10, of Art. 199 [42], and shall forward it

to the public official in charge of the civil registry for protocolization.

**204 [47].** In the cases of the preceding article, the act of the celebration of the marriage shall be published for eight days by means of notices posted at the doors of the office.

**205 [48].** All the proceedings connected with the celebration of the marriage with the exception of the provisions of Arts. 189 [32] and 193 [36], with regard to the hearing upon and determination of the opposition, shall be had before the public official and shall be recorded in bound and paged books, without prejudice to the other formalities which the laws of the civil registry prescribe.

**206 [49].** The copy of the act referred to in Art. 202 [45] shall be issued on unstamped paper and this copy as well as all other documents which are not required to be drawn on stamped paper, shall be issued free of charge and no official whatsoever is permitted to collect any fees therefor.

## CHAPTER VIII.

### Rights and Obligations of the Spouses.

**207 [50].** The spouses are obliged to be faithful to each other, and the infidelity of one of them shall not authorize the other to act in a similar manner. A spouse who violates this obligation may be sued by the other for divorce, without prejudice to the action which may lie under the Penal Code.

**208 [51].** The husband is obliged to live in the same house with his wife, to furnish her all the means which she needs and to exercise all acts and actions pertaining to her, defraying the necessary court costs, even in the event of her being criminally prosecuted. If the husband fails to perform these obligations, the wife has the right to bring an action to compel him to furnish her the necessary support and defray the necessary costs of judicial proceedings.

**209 [52].** In the absence of a nuptial contract, the husband is the legal administrator of all the property of the

marriage, including that of the wife; both of that which she brought to the marriage and of that which she may acquire subsequently in her own name.

**210 [53].** The wife is obliged to live with her husband wherever he takes up his residence. If she fail to comply with this obligation, the husband may have recourse to the necessary judicial measures and shall have the right to refuse her support. The courts may, after a hearing in the matter, relieve the wife of this obligation if the fulfillment thereof might endanger her life.

**211 [54].** A wife cannot appear in court, either in person or through an attorney, without special permission from her husband, given in writing, excepting the cases in which this Code presumes authorization by the husband or does not require it, or requires only general authorization, or only judicial authorization.

**212 [55].** Nor can the wife, without leave or a power of attorney from the husband, enter into any contract whatsoever, or withdraw from a previous contract, or acquire property or rights of action under an onerous or lucrative title, or alienate or bind her property, or contract any obligation whatsoever, or remit an obligation in her favor.

**213 [56].** It is presumed that the wife has the authorization of her husband, if she publicly engages in some profession or industry, such as the directress of a college, a school teacher, actress, etc., and in such cases it is understood that she is authorized by the husband to execute all acts or contracts connected with her profession or occupation, if he has made no objection and had it publicly advertised, or judicially served on the person about to enter into a contract with her.

Authorization is also presumed to have been granted by the husband in the purchases for cash which the wife makes, and in the purchases on credit of objects for ordinary family consumption.

**214 [57].** Authorization by the husband is not necessary in litigation between him and his wife, nor to defend herself against criminal charges, nor to make her testament or revoke one which she may have made, nor to manage

the property she reserved to herself under the marriage contract.

**215 [58].** Only the wife, the husband, and the heirs of either, have the right to set up the nullity of the acts and obligations of the wife, on account of the want of permission from the husband.

**216 [59].** The wife shall require authorization by the judge of the domicile only, if the husband is insane or his whereabouts unknown, in the cases of Art. 135 of this Code, as to the acts forbidden to married minors.

**217 [60].** The courts may, after an inquiry, supply the authorization of the husband, if the latter is absent or prevented from giving it, and in the special cases provided for in this Code.

**218 [61].** The husband may revoke at will the authorization he has given his wife; but the revocation shall not have any retroactive effect to the prejudice of a third person.

**219 [62].** The husband may ratify generally or particularly the acts of his wife performed without his authorization. The ratification may be implied by acts of the husband unequivocally expressing his acquiescence.

**220 [63].** The acts and contracts of the wife which have not been authorized by the husband, or which have been authorized by the judge against the will of the husband, bind only her own property, if the rescission thereof be not demanded in the first case; but they do not bind the conjugal partnership property nor that of the husband beyond the amount of the profit accruing to the conjugal partnership or the husband by the act.

## CHAPTER IX.

### Of Divorce.

**221 [64].** The divorce authorized by this Code consists only in the personal separation of the spouses, without dissolving the marriage tie.

**222 [65].** The right to demand a divorce of a judge of competent jurisdiction cannot be waived in matrimonial agreements.

**223 [66].** There is no divorce by mutual consent of the parties. They shall not be considered divorced without the decree of a judge of competent jurisdiction.

**224 [67].** The following are causes for divorce:

1. Adultery on the part of the wife or of the husband.
2. An attempt by one of the spouses upon the life of the other, whether as principal or accomplice.
3. The provocation of one of the spouses to the other to commit adultery or other crimes.
4. Cruel treatment (*sevicia*).<sup>11</sup>
5. Grave injuries:<sup>12</sup> in determining the gravity of the injury the court shall take into consideration the degree of culture, social position and other circumstances of fact which may be present.
6. Bad treatment, even if not grave, when so frequent as to make conjugal life intolerable.
7. Willful and malicious abandonment.

**225 [68].** An action for divorce having been instituted, or before the institution thereof in urgent cases, the judge may on the petition of a party decree the personal separation of the married couple and that the wife be placed in the care of a chaste family, within the limits of his jurisdiction; provide for the care of the children in accordance with the provisions of this Code and determine the allowance for support to be made the wife and the children who do not remain under the care of the father, as well as the necessary costs of the wife in the divorce proceedings.

**226 [69].** If either of the spouses is a minor, he or she cannot appear in court, either as plaintiff or defendant,

<sup>11</sup> Escriche defines this term as "excessive cruelty."

<sup>12</sup> Art. 180 of the Argentine Penal Code provides that *injuria* "is committed by one who dishonors, discredits or brings another into disrepute, by means of words or writings which cannot constitute calumny, or by means of acts or actions which do not constitute a graver crime." Bouvier, Law Dict., defines "injury" in the civil law, as "a delict committed in contempt or outrage of any one, whereby his body, his dignity, or his reputation is maliciously injured." Voet, *Com. ad Pand.* 47, 7, 10, n. 1.

without the assistance of a special curator, to be selected for this sole purpose by the party interested, or by the judge upon his or her failure to do so.

**227 [70].** Any kind of proof is admissible in these proceedings, with the exception of the confession or oath of the spouses.

**228 [71].** An action for divorce is extinguished and the effects of a divorce which has been decreed terminate, if the spouses become reconciled after the occurrence of the acts which served as a basis for the action or upon which the divorce was granted. The law presumes a reconciliation when the husband cohabits with the wife, after having left the common dwelling. A reconciliation restores everything to the state existing prior to the institution of divorce proceedings.

## CHAPTER X.

### Effects of Divorce.

**229 [72].** After their separation by a decree of divorce, each of the spouses may establish his or her domicile or residence wherever he or she may see fit, even though it be abroad; but if he or she has the custody of children, they cannot be taken out of the country without the permission of the judge of the domicile.

**230 [73].** If the wife is of full age, she may perform all acts of civil life.

When either of the spouses is under age, he or she remains subject to the provisions of this Code relating to emancipated minors.

**231 [74].** If during the divorce proceedings, the conduct of the husband is such as to lead to the fear of fraudulent alienations, or the dissipation of the property of the marriage, the wife may apply to the judge of the cause to have an inventory thereof made and to have it placed in charge of another administrator, or that the husband give bond in the amount of the value of the property. After the decree of divorce, the spouses may demand the separation of the property of the

conjugal partnership, in accordance with the provisions contained in the title *Of the Conjugal Partnership*.

**232 [75].** An innocent spouse who did not give cause for the divorce, may revoke the donations or benefits which under the marriage contract he or she made or promised the other spouse, whether they were to become effective during his or her lifetime or after his or her death.

**233 [76].** The children under five years of age shall remain under the care of the wife. Those over this age shall be turned over to the spouse who, in the opinion of the judge, is better qualified to bring them up, and neither the husband nor the wife shall be permitted to set up a preferred right to their custody.

**234 [77].** If on account of a criminal charge brought by one of the spouses against the other, the latter should be sentenced to imprisonment (*prisión*), confinement (*reclusión*), or banishment (*destierro*), none of the children of whatever age he may be, can accompany the spouse sentenced to one of these penalties, without the consent of the other spouse.

**235 [78].** Both the father and the mother remain subject to all of their charges and obligations in favor of their children, whichever be the spouse who gave ground for divorce.

**236 [79].** The husband who has given cause for the divorce must contribute to the support of the wife, if she does not have sufficient means of her own. The judge shall determine the amount and form, taking into consideration the circumstances of both.

**237 [80].** Either of the spouses who has given cause for the divorce is entitled to receive from the other if he or she have means, the amount necessary for his or her subsistence, if in absolute want.

## CHAPTER XI.

### Of the Dissolution of Marriage.

**238 [81].** A valid marriage is dissolved only by the death of one of the spouses.

**239 [82].** A marriage which can be dissolved according to the laws of the country in which it was celebrated, is not dissolved in the Republic except in conformity with the preceding article.

**240 [83].** The presumptive death of a spouse who is absent or has disappeared does not authorize the other spouse to contract a new marriage.

As long as the death of the spouse who is absent or has disappeared is not proved, the marriage is not considered as dissolved.

## CHAPTER XII.

### Of the Nullity of Marriage.

**241 [84].** A marriage in which any one of the impediments set forth in subdivisions 1, 2, 3, 5, and 6 of Art. 166 [9] is present, is null and void, and an action for its annulment may be brought by the spouse who was unaware of the existence of the impediment and by the persons who could have opposed the celebration of the marriage.

**242 [85].** A marriage is voidable:

1. Whenever celebrated with the impediment established in subdivision 4 of Art. 166 [9].

The action for its annulment may be brought by the incapacitated spouse and by the persons who could have opposed the celebration of the marriage on his or her behalf.

The action for annulment cannot be brought after the incapacitated spouse or spouses have attained legal age, nor, whatever their age, if the wife has conceived.

2. Whenever the marriage is celebrated with the impediment established in subdivision 7 of Art. 166 [9].

The action for annulment may be brought by the persons who could have opposed the marriage.

The incapacitated person himself or herself may bring the action for annulment of the marriage upon regaining his or her reason, if he or she did not continue the marital life, and



the other spouse may do so if he or she was unaware of the incapacity at the time of the celebration of the marriage and did not continue marital life after knowing of the incapacity.

3. Whenever the consent is vitiated on account of the presence of any one of the vices referred to in Art. 173 [16].

In such case the action for the annulment of the marriage may be brought only by the spouse who was the victim of the error, *dolus* or violence. This right of action is extinguished as to the husband if cohabitation has taken place during three days after the error or *dolus* was discovered, or the violence suppressed, and as to the wife during thirty days thereafter.

4. In case of the absolute and manifest impotence of one of the spouses, prior to the celebration of the marriage.

• The right of action is vested exclusively in the other spouse.

• **243** [86]. An action for the annulment of a marriage may be brought only during the lifetime of both spouses; either of the conjugal partners may, nevertheless, at any time exercise his or her right of action against a second marriage contracted by his or her spouse; if the nullity of the first marriage is set up, this plea shall be disposed of first.

## CHAPTER XIII.

### Effects of the Nullity of Marriage.

**244** [87]. If the void marriage was contracted in good faith by both spouses, it produces up to the date on which it is annulled, all the effects of a valid marriage, not only with relation to the persons and property of the spouses, but also in relation to the children.

In such case, the annulment produces the following effects only:

1. As to the spouses, all the rights and obligations arising out of the marriage terminate, with the sole exception of the mutual obligation to furnish each other support in case of necessity.

2. As to the property, the same effects as the death of one of the spouses; but before the death of one of them, the other shall have no right to the profits or benefits granted the surviving spouse by the marriage contract.

3. As to the children conceived during the putative marriage, they shall be considered as legitimate, with the rights and obligations of the children of a valid marriage.

4. As to the natural children conceived during the putative marriage between the father and the mother, and born thereafter, they shall be legitimated in the same cases in which a subsequent valid marriage produces this effect.

**245 [88].** If there was good faith on the part of one of the spouses only, the marriage to the date of the decree whereby the marriage is annulled, shall also produce the effects of a valid marriage, but only with respect to the spouse who acted in good faith and the children, and not with respect to the spouse who acted in bad faith.

The annulment in the latter case shall produce the following effects:

1. The spouse who acted in bad faith cannot demand support of the spouse who acted in good faith.

2. The spouse who acted in bad faith shall not be entitled to any of the benefits granted him or her by the marriage contract.

3. The spouse who acted in bad faith shall not enjoy the rights of paternal power over the children, but shall be subject to the obligations thereof.

**246 [89].** If the void marriage was contracted in bad faith by both spouses, it does not produce any civil effect whatsoever.

The annulment produces the following effects:

1. The union shall be considered as concubinage.

2. With respect to the property, proceedings shall be as in the case of the dissolution of an actual partnership, the marriage contract becoming null and void.

3. As to the children, they shall be considered as illegitimate and in the class in which the impediment which avoids the marriage places them.

**247 [90].** Bad faith on the part of the spouses consists in the knowledge they had, or should have had, the day of the celebration of the marriage, of the impediment which avoids the marriage.

There is no good faith on account of ignorance or error of law.

Nor is there good faith on account of ignorance or an error of fact which is not excusable, unless the error was due to *dolus*.

**248 [91].** A spouse who acted in good faith may bring an action to recover damages <sup>13</sup> against the spouse who acted in bad faith and against the third persons who were responsible for the error.

**249 [92].** In all the cases of the preceding articles, the nullity does not prejudice the rights acquired by third persons who have, in good faith, entered into contracts with the supposed spouses.

## CHAPTER XIV.

### Of Second or Subsequent Nuptials.

**250 [93].** The wife cannot marry until ten months after the dissolution or annulment of the marriage, unless she has been left pregnant, in which case she may marry after parturition.

**251 [94].** A woman who marries in violation of the provisions of the preceding article, forfeits the legacies and any other liberality or benefit of which she may have been the object in the testament of her husband.

**252 [95].** A widow who contracts marriage while having minor children under her power, must petition the judge to appoint a tutor to them.

If she should fail to do so, she shall be liable with all her property for the damages resulting to the interests of her children.

The same obligation and liability rest on her husband.

<sup>13</sup> *Daños y perjuicios*: see Arts. 553 [519] and 1103 [1069].

**CHAPTER XV.****General Provisions.**

**253 [96].** Marriages celebrated after this law goes into effect shall be proved by the record of the celebration of the marriage or a certified copy thereof.

**254 [97].** If it should be impossible to produce the record or a certified copy thereof, any means of proof shall be admissible; such proofs shall not be admitted until the impossibility is established.

**255 [98].** The provisions of the preceding article apply:

1. Whenever the registry has been destroyed or lost in whole or in part.

2. Whenever it is incomplete or has been kept irregularly.

3. Whenever the record has been omitted by the public official.

**256 [99].** A decision to the effect that a record has been destroyed, lost or omitted, shall be communicated immediately to the public official, who shall transcribe it in a supplementary register to be kept with the formalities prescribed by Art. 205 [48].

**257 [100].** When the destruction, forgery or loss of the record of marriage gives rise to a criminal action, the judgment whereby the existence of the marriage is declared shall be recorded in the registry of the civil status and supply the record.

**258 [101].** The possession of a status cannot be invoked by the spouses nor by third persons as sufficient proof, when it is sought to establish their status as married persons or to enforce the civil effects of marriage. When the possession of a status is present and there exists a record of the celebration of the marriage, a failure to observe the formalities prescribed cannot be pleaded against its validity.

**259 [102].** The cognizance and decision of causes relating to divorce or the nullity of a marriage celebrated before or after this law goes into effect, corresponds to the civil jurisdiction.

**260** [103]. When a marriage celebrated prior to this law is involved and the action for annulment is based upon an impediment, the provisions of this law shall apply; if the action is based on defects of form, the canonical laws shall apply.

**261** [104]. Actions for divorce or annulment of marriage must be brought in the domicile of the spouses. If the husband has no domicile in the Republic, the action may be brought before the judge of the last domicile he may have had therein, if the marriage was celebrated in the Republic.

**262** [105]. Every decree of divorce or annulment of a marriage shall be communciated by the judge of the cause, immediately after becoming final, to the public official in charge of the registry in order that he may make a note thereof in the margin opposite the record of the marriage, if the latter was celebrated after the date this law went into effect, or in a special registry in the case of marriages contracted before such date.

**263** [106]. The chiefs of the sections of the registry of the civil status shall perform the functions which this law entrusts to the public officials, in the capital of the Republic and the national territories; similar functions shall be discharged in the provinces where there is a registry of the civil status, by the persons in charge thereof; and where there is no registry, by the judicial authority of the district.

**264** [107]. A public official who officiates at the marriage of a minor without the consent of the parents, tutors or curators of the latter, or judicial consent, in their default, shall be punished by imprisonment for one to three months and by the loss of his office, and one who officiates at a marriage knowing of the existence of an impediment which may be a cause for the annulment of the act, by imprisonment for one to two years, and the payment of a fine of one hundred to five hundred *pesos*.

**265** [108]. An official of the civil registry who violates any of the other provisions of this law shall incur a penalty of one hundred to five hundred *pesos*.

**266** [109]. A spouse who contracts marriage knowing of the existence of any of the impediments set forth in Art. 166

[9], which impediment results in its annulment, shall be liable to the other for damages,<sup>14</sup> without prejudice to the criminal action which may lie. If the actual damage cannot be determined, the judge shall estimate the moral damages at a sum of money in proportion to the circumstances of the case.

**267** [110]. The ministers, pastors, and priests of any religion or sect, who celebrate a religious marriage without having before them the record of the celebration of the marriage, shall be subject to the liabilities established by Art. 147 of the Penal Code, and if they hold a public office, they shall be removed therefrom.

**268** [111]. The enforcement of the penalties established in the preceding articles shall be demanded by the representative of the government before a court of competent jurisdiction.

**269** [112]. All the provisions of this Code relating to sacrilegious children are repealed. Persons now called sacrilegious children shall have the filiation corresponding to them according to the civil provisions which remain in force.

**270** [113]. The public registries which were to be created by the municipal boards according to Art. 80 of this Code, shall be created by the respective legislatures.

**271** [114]. Art. 297 [263] of this Code is amended to read as follows: "Legitimate filiation shall be proved: by the record of the birth in the civil registry, where there is one, and in the absence thereof, by the record in the parochial registry and by the record of the marriage in the civil registry, after the date this law goes into effect, and in the parochial registries before such date. In the absence of a record, or when the record in the registries has been made under false names or as of unknown parents, the legitimate filiation may be proved by evidence of any kind."

**272** [115]. A widower or widow who, having children by a former marriage, contracts another marriage, is obliged to reserve to the children of the first marriage, or to their legitimate descendants, the ownership of the property which he or she may have inherited from any of them by testament or

<sup>14</sup>*Pérdidas é intereses*: see Art. 1103 [1069].

*ab intestato*, retaining during his or her lifetime only the usufruct of such property.

**273 [116].** The obligation to make the reservation terminates if at the time of the death of the father or mother who contracted a second marriage, there are no children nor any legitimate descendants of theirs, even though there be heirs of theirs living.

## TITLE II. OF LEGITIMATE CHILDREN.

**274 [240].** The law assumes that children born after one hundred and eighty days have elapsed since the valid or putative marriage of the mother, and posthumous children born within three hundred days from the date upon which the valid or putative marriage was dissolved by the death of the husband, or by its annulment, were conceived during the marriage.

**275 [241].** If the marriage was dissolved or annulled and the mother contracted another marriage within the period prohibited by Art. 250 [93], a child born before the expiration of one hundred and eighty days after the second marriage, is presumed to have been conceived during the first marriage, provided it be born within three hundred days after the dissolution or annulment of the first marriage.

**276 [242].** A child born after one hundred and eighty days have elapsed since the celebration of the second marriage, is presumed to have been conceived during such marriage, even though it be born within the three hundred days following the dissolution of the first marriage.

**277 [243].** A child born within the three hundred days following the dissolution of the marriage of the mother, is presumed to have been conceived during her marriage, even though the mother or another person claiming to be its father, acknowledges it as a natural child.

**278 [244].** No proof in rebuttal of the presumptions of law set forth in the foregoing articles is admissible.

**279** [245]. The law presumes that the husband is the father of the children conceived by the wife during the marriage.

**280** [246]. Legitimate children are children born after one hundred and eighty days have elapsed since the celebration of the marriage, and within the three hundred days following its dissolution, in the absence of proof that it had been impossible for the husband to have had access to his wife during the first hundred and twenty days of the three hundred days preceding the birth.

**281** [247]. A woman who, upon the death of her husband, believes herself to be pregnant, must notify the persons who, in the absence of a posthumous child, would be called to succeed the deceased. The persons interested may demand the adoption of all necessary measures to assure the fact that the parturition has actually taken place and that it occurred during the time within which the child must be considered legitimate.

**282** [248]. The mother is entitled to an allowance from the property which is to fall to the posthumous child in the amount necessary to meet the expenses connected with the parturition; and even though the child be not born alive, or even though it appear that the woman was not pregnant, she shall not be obliged to return the amount she may have received.

**283** [249]. A recently divorced woman who believes herself to be pregnant, must notify the judge or the husband within a period of thirty days after her separation; and the latter may also demand the adoption of the necessary measures to assure himself also that the birth has actually taken place, and that it occurred during the time within which the child must be considered legitimate.

**284** [250]. In case of divorce, if the woman after her absolute or temporary separation has a child born after three hundred days have elapsed since the date the separation actually took place, the husband or his heirs have the right to deny the paternity, in the absence of proof that a private reconciliation between the spouses had taken place.



These provisions apply to a case of the provisional separation of the spouses, by reason of an action for the annulment of the marriage.

**285 [251].** The presumptive death of an absent husband having been declared, if the wife during his absence bore a child after three hundred days since the first day of the absence had elapsed, the presumptive heirs of the husband may bring an action against the child to deny the paternity, if the mother is in provisional or absolute possession of the property, or in order to exclude her, if she seeks to obtain it.

**286 [252].** The husband cannot repudiate the child on the ground of the adultery of the wife, or his impotence prior to the marriage. But if in addition to the adultery of the wife, the birth is concealed from him, the husband may prove all the acts which justify his repudiation of the child.

**287 [253].** The husband cannot repudiate the legitimacy of a child born within one hundred and eighty days following the marriage, if before his marriage he was aware of the pregnancy of his future spouse, or if he consented to the child being given his surname in the record of birth, or if in some other manner he impliedly or expressly acknowledged the child of his wife as his own.

**288 [254].** Any claim of the husband questioning the legitimacy of a child conceived by his wife during the marriage, must be brought within sixty days from the date he had knowledge of the birth.

**289 [255].** Any statement or admission on the part of the mother, affirming or denying the paternity of the husband, is not admissible as evidence.

**290 [256].** During the lifetime of the husband he alone can question the legitimacy of a child conceived during marriage.

**291 [257].** But the legitimacy of the child may be contested on the ground of no marriage having existed between his father and mother, or that the marriage was void, or that it had been annulled, or that the child had not been conceived during the marriage.

**292 [258].** The heirs of the husband cannot question the legitimacy of a child born within one hundred and eighty days following the celebration of the marriage, if he had not commenced the action. In other cases, if the husband dies without questioning the legitimacy of the child, his heirs and any other person having an actual interest therein, shall be allowed two months within which to institute proceedings. This period shall run from the day on which the child entered upon the possession of the property of the husband. No action shall lie if the husband acknowledged the child in his testament, or in any other public form.

**293 [259].** The children may institute proceedings to establish their legitimate filiation if repudiated by their parents. The heirs and descendants may continue the prosecution of the proceedings brought by such children, or institute proceedings if the child repudiated by the parents dies during his minority.

**294 [260].** An action to establish filiation can be brought only against the father and mother jointly, and after their death, against their heirs.

**295 [261].** The filiation of which the child is in possession, even though it agree with the parochial records, may be contested either on the ground of a supposititious birth, the substitution of the real child, or that the woman is not the real mother of the child she passes as her own.

**296 [262].** The right to demand the establishment of filiation, or to question legitimacy, is not extinguished, either by prescription nor by express or implied waiver; but acquired pecuniary rights are subject to prescription.

**297 [263].** (This article has been amended by Art. 114 of the Law of Civil Marriage, included in this Code as Art. 271.)

### **TITLE III. OF PATERNAL POWER.**

**298 [264].** The paternal power is the aggregate of the rights which the law grants parents from the time of the

conception of legitimate children, in the persons and property of such children, during their minority and as long as they are not emancipated.

**299 [265].** Minor children are under the authority and power of their parents. The latter have the obligation and right to bring up their children, to select the occupation they are to follow, to support and educate them according to their condition and means, not only with the property belonging to them or to the mother, but with their own property.

**300 [266].** Children owe respect and obedience to their parents. Even though emancipated, they are obliged to care for them in their old age, or when in a state of insanity or illness, and to provide for their needs in all circumstances of life, in which their assistance is essential. Other legitimate ascendants are entitled to the same care and assistance.

**301 [267].** The obligation to furnish support includes the satisfaction of the necessities of the children in maintenance, clothing, lodging, attendance and expenses during illness.

**302 [268].** The obligation to furnish support to the children does not terminate even when their necessities are due to their own bad conduct.

**303 [269].** If a minor child, who is absent from the paternal home, finds himself in a state of urgent need, which cannot be provided for by the parents, the aid furnished him or her shall be considered to have been given with the authority of the latter.

**304 [270].** Parents are not obliged to furnish their sons the means with which to set up an establishment, nor to settle dowries on their daughters.

**305 [271].** In case of divorce, the judicial separation of property, or the annulment of the marriage, it shall be always the duty of the father to furnish support to his children and educate them, if the judge leaves them in his care.

**306 [272].** If the father fails to fulfill this obligation, an action may be brought against him to compel him to furnish support, either by the child himself if an adult, with the assistance of a special tutor, or by any of the relatives, or by the Department of Minors.

**307** [273]. The parents are responsible for the damages caused by their minor children under ten years of age, who live with them.

**308** [274]. The parents may, without any intervention whatsoever on the part of their minor children, appear in court for them as plaintiffs or defendants, and on their behalf enter into any contract within the bounds of their administration, as determined in this Code.

**309** [275]. The children cannot leave the paternal home, or that in which their parents have placed them, nor enlist in the military service, nor enter religious communities, nor obligate their persons in any other manner, nor engage in any trade, profession or separate industry, without the permission or authorization of their parents.

**310** [276]. If the children leave the paternal home, or that in which their parents have placed them, whether disobediently, or by detention on the part of others, the parents may call on the public authorities for any aid which may be necessary to cause them to return under their authority. They may bring criminal actions against the seducers or corrupters of their children, and against the persons holding them without authority.

**311** [277]. Parents may require the children under their power to render services suitable to their age, and the latter shall have no right to claim any payment or reward.

**312** [278]. The parents have the power to discipline or cause their children to be disciplined in moderation; and with the intervention of the judge, cause them to be confined in a correctional institution for a period of one month. The local authority must repress excessive correction on the part of parents.

**313** [279]. Parents are not permitted to enter into any contract whatsoever with the children who are under their paternal power.

**314** [280]. Parents cannot enter into any contracts for the hire of the services of their adult children, nor apprentice them to learn a trade, without their consent.

**315** [281]. A child under the control and power of his

parents cannot appear in court as a plaintiff, unless authorized to do so by his father.

**316 [282].** If the father refuses to give his consent to the son to institute a civil action against a third party, the judge, after consideration of the reasons which the father may have for withholding consent, may supply the permission, appointing to the son a special tutor *ad litem*.

**317 [283].** It is presumed that adult children under the control and power of their parents, if they hold a public office, or are engaged in the practice of a profession or industry, are authorized by their parents to execute all acts and contracts connected with the public office or their profession or industry. The obligations arising out of these acts extend solely to the property of which the father does not have the administration and usufruct, or merely the usufruct.

**318 [284].** Adult children under the control and power of their parents who are absent from the paternal home with the permission of the father, or in a foreign country, or in a remote place within the Republic, who need funds for their maintenance or other urgent necessities, may be authorized by the judge of the place, or by the consul of the Republic to contract debts to meet their need.

**319 [285].** Children under the control and power of their parents, cannot sue the parents except for the protection of their own interests, and after obtaining leave from the judge of the territory, even though they have a separate industry or are merchants.

**320 [286].** Authorization by the father is not necessary to appear in court if the adult child under his control and power is criminally prosecuted, nor to make a testament, nor to acknowledge his natural children.

**321 [287].** The father and the mother enjoy the usufruct of all the property of their legitimate children under the paternal power, with the exception of the following:

1. Of the property which the children acquire for their civil, military, or ecclesiastical services.
2. Of that acquired by their labor or industry, even when they live in the home of their parents.

3. Of that acquired through fortuitous events, as by gaming, betting, etc.

4. Of that which they inherit by reason of the incapacity of the father to be an heir.

**322 [288].** The usufruct of said excepted property is vested in the children.

**323 [289].** The children also have the ownership and usufruct of the property acquired by inheritance, donation or legacy, when the donor or testator has directed that the usufruct is to belong to the child.

**324 [290].** The clause is implied that the father is not to enjoy the usufruct of the property donated or left to the children under his control and power, when such property is donated or left with an indication of the application to be made of the respective fruits or income.

**325 [291].** The following are charges upon the legal usufruct of the father and of the mother:

1. Those imposed on every usufructuary, except that of giving security.

2. The cost of maintenance and education of the children, in proportion to the value of the usufruct.

3. The payment of interest on sums falling due during the usufruct.

4. The expenses of the illness and burial of the child, as well as those of the burial and funeral of the person who may have designated such child as his heir.

**326 [292].** The charges upon the legal usufruct are real charges. The enjoyment of the usufruct of the parents cannot be attached on account of acts or debts, without leaving to them what may be necessary to fulfill said charges.

**327 [293].** The father is the legal administrator of the property of the children under his power, even of that property of which he does not have the usufruct.

**328 [294].** The father does not have the administration of the property donated or left by testament to the children, if donated or left subject to the condition that he is not to administer it.

**329 [295].** A condition which deprives the father of the

administration of the property donated or left to the children, does not deprive him of the right to the usufruct.

**330 [296].** Within the three months following the death of the father, or of the mother, the survivor must make a judicial inventory of the property of the conjugal partnership, describing therein the property belonging to the children, under the penalty of forfeiting the usufruct of the property of the minor children.

**331 [297].** The parents cannot convey the immovable property of the children without authorization by the judge of the domicile; nor the securities of the national debt; nor constitute real rights in said property; nor transfer real rights of the children in the property of others; nor purchase themselves, nor through third persons, at public auction, movables or immovables of their children; nor become the assignees of credits, rights, or actions against their children, unless the assignments are due to a legal subrogation; nor make a voluntary remission of the rights of their children; nor enter into private transactions<sup>16</sup> with their children as to their maternal inheritance or as to inheritances in which they are co-heirs or legatees with them; nor obligate their children as sureties for themselves, or third persons.

**332 [298].** Nor can they alienate cattle of any kind whatsoever, which form rural establishments, excepting those the sale of which is permitted to usufructuaries who enjoy the usufruct of herds or flocks.

**333 [299].** The acts of parents in violation of the prohibitions established in the two preceding articles are void and do not produce any legal effect whatsoever.

**334 [300].** Leases by parents of the property of their children carry with them an implied condition that they are to terminate when the paternal power ends.

**335 [301].** Parents lose the administration of the property of their children, if it be disastrous to their estate, or if their inability to administer it be proved, or if they become reduced to a state of insolvency and insolvency proceedings are instituted against them. In the latter case they may

<sup>16</sup> See note to Art. 758 [724].

continue the administration if the creditors permit it and do not attach their person.

**336 [302].** The parents, even though insolvent, may continue to administer the property of the children, if they give bond or mortgages in a sufficient amount.

**337 [303].** Upon the removal of the father from the administration of the property, the judge shall entrust it to a special tutor, and the latter shall deliver to the father the surplus revenue from the property of the children, after deduction of the cost of administration, and of their support and education.

**338 [304].** The parents lose the administration of the property of their children, when they are deprived of the paternal power, but if deprived thereof by reason of insanity, they do not lose the right to the usufruct of the property of their children.

**339 [305].** The rights and duties of the father with regard to his children and their property pass to the widowed mother.

**340 [306].** Paternal power terminates:

1. By the death of the parents or of the children.
2. By the act of the parents taking vows in monastic institutions, or by the act of the children taking vows with the authorization of the parents.
3. By the father or mother forfeiting it.
4. By the children attaining their majority.
5. By the emancipation of the children.

**341 [307].** Parents who desert or abandon their children in infancy lose the paternal power.

**342 [308].** A widowed mother who contracts a second marriage loses the paternal power.

**343 [309].** Judges may deprive parents of the paternal power, if they treat their children with excessive harshness, or if they give them immoral teachings, counsel or examples.

**344 [310].** The paternal power is suspended by the absence of the parents, when their whereabouts is unknown, and by reason of their mental incapacity.



**TITLE IV. OF LEGITIMATION.**

**345 [311].** Children born out of wedlock, of parents who at the time of their conception could have married, even though requiring dispensation therefor, become legitimated by the subsequent marriage of the parents.

**346 [312].** This Code admits of no other mode of legitimation as to children who have their domicile of origin in the Republic.

**347 [313].** With regard to children who have their domicile of origin without the Republic, the modes of legitimation provided for by the laws of the country of such domicile are admitted.

**348 [314].** The provisions of this title regarding legitimation by subsequent marriage, shall apply only to children whose parents, at the time of the celebration of the marriage, have or had their domicile in the Republic.

**349 [315].** With regard to children whose parents have or had their domicile without the Republic, at the time of the celebration of their marriage, even though their domicile at the time of the conception or birth was a different one, and even though the marriage was celebrated in the Republic, the subsequent marriage does not legitimate the children, if the laws of the country of the domicile of the father at the time of the celebration of the marriage do not sanction this mode of legitimation, and if they do sanction it, the legitimation shall be governed by said laws only.

**350 [316].** The legitimation may be extended to the children who are deceased at the time of the celebration of the marriage, and have left descendants, in which case it benefits the latter.

**351 [317].** In order for the legitimation to be effective, the parents of the natural child must acknowledge him either before the celebration of the marriage, or at the time the marriage is recorded in the parochial registers, or within two months after the celebration of the marriage.

**352 [318].** The acknowledgment must be made, either in the record of the birth, or before the local judge, the proper act<sup>16</sup> being executed, or by a public instrument, or in the presence of the parish priest and the witnesses to the marriage, if made at the time the latter is contracted.<sup>17</sup>

**353 [319].** Children legitimated by a subsequent marriage, are for all legal purposes, the same as legitimate children, from the date of the celebration of the marriage, and the legitimation benefits their legitimate posterity. The term *legitimate children, children of a legitimate marriage*, includes legitimated children.

**354 [320].** A person who has the free administration of his property may accept or repudiate the legitimation. Persons under tutorship, and married women, cannot accept or repudiate it without the consent and approval of the tutor or of the husband.

**355 [321].** The children of the marriage whereby the children are to be legitimated, may impugn the legitimation, as may the children of a prior or subsequent marriage, or the persons having an actual interest in so doing.

**356 [322].** The denial of paternity does not prevent the legitimation of children conceived before the marriage and born thereafter, if the husband was aware, before the marriage, of the pregnancy of his wife, or if by any other means he expressly acknowledged the child to which the woman gave birth as his own, either before or after its birth.

**357 [323].** The rights and obligations arising out of the legitimation begin from the day on which the subsequent marriage is celebrated; it does not go back to the day of the conception nor to the day of the birth of the children legitimated, either to affect rights already acquired under hereditary succession, or to benefit the father in the usufruct to which he is entitled in the property of his children.

<sup>16</sup>See note to Art. 174.

<sup>17</sup>According to subdivision 2 of Art. 40 of the Law of Civil Marriage (Art. 197 of this Code), the acknowledgment is not to be made before the parish priest, but before the person in charge of the civil registry.

**TITLE V. OF NATURAL, ADULTERINE, INCESTUOUS  
AND SACRILEGIOUS CHILDREN.****CHAPTER I.****Of Natural Children.**

**358 [324].** The children described in Art. 345 [311] are natural children.

**359 [325].** Natural children have a right of action to demand their acknowledgment by the father or the mother, or that the judge so declare them, when the parents deny that they are their children, and they shall be permitted to introduce at the inquiry into their paternity or maternity any evidence which is admissible to prove facts, which contribute to establish natural filiation. In the absence of the possession of any status, this right may be exercised by the children during the lifetime of their parents only.

**360 [326].** The inquiry into the maternity shall not be made when the purpose thereof is to attribute the child to a married woman.

**361 [327].** The obligations of legitimate children to their parents, extend to natural children, with regard to their parents.

**362 [328].** The father and the mother have the same rights and authority over their natural children as legitimate parents have over their children.

**363 [329].** Judges may, nevertheless, restrict or suspend entirely the exercise of this right, when such action would be in furtherance of the interest of the children.

**364 [330].** It is the duty of the father and of the mother to bring up their natural children, provide for their education, give them primary instruction, and defray the expenses of their apprenticeship in a profession or trade; but in cases in which the interest of the children demands it, judges may order that the education of the child be not entrusted to the father but to the mother, or to a third person, at the expense of the parents.

**365 [331].** Parents are obliged to give their natural children necessary support until they attain the age of eighteen years, and whenever the children are in such circumstances as not to be able to provide for their own needs. This obligation rests on the heirs of the parents. The obligation to furnish support is mutual between parents and their children.

**366 [332].** The acknowledgment by parents of their natural children, by means of a public instrument, or before a judge, or in any other manner, is irrevocable, and does not admit of conditions, terms or clauses of any nature whatsoever, modifying the legal effects thereof, and neither the acceptance on the part of the child nor any notice whatsoever shall be necessary.

**367 [333].** In testaments, enunciative terms or incidental phrases, manifesting an intention to acknowledge him as such, shall be considered an acknowledgment of a natural child; but every acknowledgment in a testament is revocable.

**368 [334].** In the acknowledgment of their natural children by parents, it is forbidden to state the name of the person of or by whom the child was had, unless such person has previously acknowledged him.

**369 [335].** The acknowledgment by parents of their natural children, may be contested by the children themselves or by the persons who have an interest in so doing.

**370 [336].** Natural parents do not have the administration nor the usufruct of the property of their children.

**371 [337].** Natural children have a right of succession in the property of their deceased parents, which will be determined in the proper place.

## CHAPTER II.

### Of Adulterine, Incestuous and Sacrilegious Children.

**372 [338].** An adulterine child is one begotten of the union of two persons who at the moment of its conception could not contract marriage because one of them, or both,

were married. Good faith on the part of the father or of the mother who were living in adultery without being aware thereof, the violence itself of which the mother may have been the victim, do not change the character of the filiation, and in either case the child remains adulterine.

**373 [339].** An incestuous child is one born of parents who were unable to marry owing to an impediment by reason of relationship which could not be the subject of dispensation, according to the Canons of the Catholic Church.

**374 [340].** A sacrilegious child<sup>18</sup> is one begotten of a priest who has taken major orders, or of a person, whether father or mother, bound by a solemn vow of chastity in a religious order approved by the Catholic Church.

**375 [341].** Any inquiry whatsoever into adulterine, incestuous or sacrilegious paternity or maternity is forbidden.

**376 [342].** Adulterine, incestuous or sacrilegious children do not have under the law any father or mother nor any relatives whatsoever on the side of the father or of the mother. They have no right to make any judicial inquiry into their paternity or maternity.

**377 [343].** The only exception to the provisions of the foregoing article, is that adulterine, incestuous or sacrilegious children, voluntarily acknowledged by their parents, may demand support of them until they attain the age of eighteen years, and whenever they are unable to provide for their own needs.

**378 [344].** Adulterine, incestuous or sacrilegious children, have no right in the succession of the father or mother, and reciprocally, parents have no right in the succession of said children, nor paternal power, nor authority to appoint tutors to them.

<sup>18</sup> According to Art. 112 of the Law of Civil Marriage (Art. 269 of this Code), all provisions regarding sacrilegious children are repealed.

## **TITLE VI. OF RELATIONSHIP, ITS DEGREES: AND OF THE RIGHTS AND OBLIGATIONS OF THE RELATIVES.**

**379 [345].** Relationship is the tie which exists between all persons of either sex who are descended from the same trunk.

**380 [346].** The proximity of relationship is established by lines and degrees.

**381 [347].** The tie between two individuals, formed by a generation, is called a degree; an uninterrupted series of degrees is called a line.

**382 [348].** The trunk is the degree from which two or more lines start, and which by relation to their origin are called branches.

**383 [349].** There are three lines: the descending line, the ascending line, and the collateral line.

**384 [350].** The series of degrees or generations which unite the common trunk with its children, grandchildren and other descendants, is called the descending line.

**385 [351].** The series of degrees or generations which connect the trunk with its father, grandfather and other ascendants, is called the ascending line.

### **CHAPTER I.**

#### **Of Relationship by Consanguinity.**

**386 [352].** In the ascending and descending lines there are as many degrees as there are generations. Thus, in the descending line, the son stands in the first degree, the grandson in the second, the great-grandson in the third, and so on. In the ascending line, the father stands in the first degree, the grandfather in the second, the great-grandfather in the third, etc.

**387 [353].** In the collateral line the degrees are likewise counted by generations, going back from the person whose relationship it is sought to establish, until the common ancestor is reached; and from the latter to the other relative. Thus, two brothers stand in the second degree, an uncle and a nephew in the third, first cousins in the fourth, the children of first cousins in the sixth, and the grandchildren of first cousins in the eighth, and so on.

**388 [354].** The first collateral line starts out from the ascendants in the first degree, that is to say, from the father and mother of the person in question, and comprises his brothers and sisters and their respective posterity.

**389 [355].** The second starts out from the ascendants in the second degree, that is to say, from the grandfathers and grandmothers of the person in question, and comprises the uncle, the first cousin, and so on.

**390 [356].** The third collateral line starts out from the ascendants in the third degree, that is to say, from the great-grandfathers and great-grandmothers, and comprises their descendants. The other collateral lines are established in the same manner, beginning with the most remote ascendants.

**391 [357].** Degrees of relationship are proved by the parochial registries.

**392 [358].** The qualification of *legitimate* in the relationship of kindred, applies correlatively to all the members of the direct or collateral line, who are connected by legitimate relationship, that is to say, that springing from a marriage which is valid or putative according to the provisions of this Code.

**393 [359].** Legitimate children are those conceived during the valid or putative marriage of their father or mother, and also those legitimated by the subsequent marriage of the father and mother after their conception.

**394 [360].** Brothers are divided into bilateral and unilateral. Bilateral brothers are those who have the same father and the same mother. Unilateral brothers, those who have the same father, but different mothers, or the same mother, but different fathers.

**395 [361].** When unilateral brothers have the same father, they are called paternal brothers; when they have the same mother, they are called maternal brothers.

**396 [362].** The degrees of relationship, according to the computation established in this title, govern for all the effects declared in the laws of this Code, excepting a case in which an impediment to contract marriage is involved, when the canonical computation shall be observed.

## CHAPTER II.

### Of Relationship by Affinity.

**397 [363].** The proximity of relationship by affinity is computed by the number of degrees in which each of the spouses stands as to his or her relatives by consanguinity. In the direct line, whether descending or ascending, the son or daughter-in-law stands mutually as to the father or mother-in-law, in the same degree as a son or daughter does to his or her father or mother, and so on. In the collateral line, brothers and sisters-in-law stand in the same degree to each other as do brothers and sisters to each other. If there was a previous marriage, the step-father or step-mother stands in relation to the step-son or step-daughter mutually in the same degree in which a father or mother-in-law stands to a son or daughter-in-law.

**398 [364].** Relationship by affinity does not create any relationship whatsoever between the consanguineous relatives of one of the spouses and the consanguineous relatives of the other.

## CHAPTER III.

### Of Illegitimate Relationship.

**399 [365].** Illegitimate relatives do not form part of the family of legitimate relatives. They may, however, acquire



certain rights in the family relations, in the cases determined in this Code.

**400 [366].** Illegitimate relatives are those who spring from the same trunk for one or more generations of a union other than marriage.

## CHAPTER IV.

### Rights and Obligations of Relatives.

**401 [367].** Legitimate relatives by consanguinity owe each other support in the following order: the father, the mother, and the children. In the absence of a father and mother, or if they should be unable to furnish support, the grandfathers and grandmothers and other ascendants. Brothers and sisters to each other. The obligation to furnish support is reciprocal among relatives.

**402 [368].** Among legitimate relatives by affinity, the father-in-law and mother-in-law only owe each other support, and the son-in-law and daughter-in-law.

**403 [369].** Among illegitimate relatives, the father, the mother and their descendants owe each other support, and in the absence of the father and mother, or when they are unable to furnish support, the grandfather and grandmother and their grandsons and granddaughters.

**404 [370].** A relative who applies for support, must prove that he has no means to support himself, and that he is unable to earn means by his labor, whatever be the cause which has reduced him to this condition.

**405 [371].** A relative who furnishes or has furnished support voluntarily or under a judicial order, does not have the right to demand of the other relatives any part of what he may have given, even though the other relatives are in the same degree and condition as himself.

**406 [372].** The furnishing of support includes everything necessary for the subsistence, lodging and clothing of the

person receiving it, according to his condition in life, and also whatever may be necessary for attendance during illness.

**407** [373]. The obligation to furnish support terminates if the legitimate or legitimated children under the control and power of the father, or the natural children, marry without the consent of the parents, and if they refuse to give consent, without judicial authority; if descendants, in relation to their ascendants, or ascendants in relation to their descendants, commit any act wherefor they could be disinherited; if the children under the power and control of the parents leave the paternal home without the permission of their parents.

**408** [374]. The obligation to furnish support cannot be set off against any other obligation whatsoever, nor can it be the subject of compromise; nor can the right to support be renounced or transferred by an act *inter vivos* or the death of the person entitled to or owing support, nor vest any right in third persons to the sum allowed for support, nor can said sum be levied on for any debt whatsoever.

**409** [375]. The procedure in an action to recover support shall be summary, and it shall not be consolidated with any action which must follow the ordinary procedure; and the judge may at the beginning of the cause, or during the course thereof, according to the merits of the case, grant provisional support to the plaintiff, and also the costs of the proceedings, if an absolute lack of means to prosecute them is established.

**410** [376]. No appeal whatsoever which stays the proceedings is allowed from a decision allowing provisional support, nor can the person receiving the support be compelled to furnish any bond or security to return what he may have received, if the judgment is set aside.

## **TITLE VII. OF TUTORSHIP.**

### **CHAPTER I.**

#### **Of Tutorship in General.**

**411 [377].** Tutorship is the right which the law grants to administer the person and property of a minor, who is not subject to the paternal power, and to represent him in all acts of civil life.

**412 [378].** The relatives of orphaned minors are obliged to inform magistrates of the orphanacy, or of the fact that the tutorship is vacant; if they fail to do so, they shall forfeit the right to the tutorship which the law grants them.

**413 [379].** Tutorship is a personal trust which does not pass to the heirs, and which no one can be excused from discharging without sufficient cause.

**414 [380].** The tutor is the legitimate representative of the minor in all civil matters.

**415 [381].** Tutorship is exercised under the supervision and surveillance of the Department of Minors.

**416 [382].** Tutorship is granted either by the parents, the law, or the judge.

### **CHAPTER II.**

#### **Of Tutorship Granted by the Parents.**

**417 [383].** A father, whether of age or a minor, and a mother who has not contracted a second marriage, whichever dies last, may appoint by testament a tutor to their children who are under the paternal power. They may also make the appointment by public instrument to take effect after their death.

**418 [384].** The appointment of a tutor may be made by the parents, subject to any clause or condition which is not prohibited.

**419** [385]. Clauses whereby the tutor is relieved from making an inventory of the property of the minor, or from giving an accounting of his administration whenever directed to do so by this Code, or authorizing him to enter upon the possession of the property, before making the inventory, are prohibited and shall be considered as not written.

**420** [386]. Tutorship must be exercised by a single person, and parents are forbidden to appoint two or more tutors to act as joint tutors; and if they do so, the only effect of the appointment will be to cause the appointees to discharge the tutorship in the order in which they have been named, in the event of the death, incapacity, excuse, or removal of any of them.

**421** [387]. Parents may appoint tutors to a child whom they disinherit.

**422** [388]. The tutorship granted by parents must be confirmed by the judge, and if found to have been legally granted, the tutor appointed shall be confirmed in his position.

### CHAPTER III.

#### Of Legal Tutorship.

**423** [389]. Legal tutorship takes place when the parents have not appointed a tutor to their children, or when the appointees do not enter upon the discharge of the tutorship, or cease to act.

**424** [390]. Legal tutorship corresponds solely to the grandparents and brothers of the minor, in the following order:

1. To the paternal grandfather.
2. To the maternal grandfather.
3. To the paternal or maternal grandmothers, if they have remained widows.
4. To the brothers, preference being given to the brothers on both sides, and among the latter, to the eldest.

These persons shall be substituted in the tutorship in the order in which they are named.

**425 [391].** The judge shall not confirm or grant the legal tutorship to any person other than one suitable for the trust by reason of his means or good reputation, in the discretion of the judge, preference being always given to the more suitable over the less suitable, notwithstanding the order established in the preceding article.

## CHAPTER IV.

### Of Dative Tutorship.

**426 [392].** Judges shall appoint a tutor to a minor if the parents have failed to do so, and when there are none of the relatives called to discharge the legal tutorship, or if they are not capacitated or suitable, or have resigned the tutorship, or have been removed therefrom.

**427 [393].** The appointment of a dative tutor shall be made without the stipulation of any condition whatsoever, and shall continue until the tutorship is terminated.

## CHAPTER V.

### Of Tutorship of Natural Children.

**428 [394].** The survivor of the natural parents may by public instrument or by testament appoint tutors to his children when he or she has instituted them his or her heirs, or only a curator for the property which such parent may have left them.

**429 [395].** The tutorship of natural children is governed by the same rules which apply to that of legitimate children, with the exception that legal tutorship does not lie with respect to them.

**430 [396].** Children admitted to asylums or to foundling institutions, for any reason whatsoever, and under any name, are under the tutorship of the administrative boards.

**CHAPTER VI****Of Special Tutorship.**

**431 [397].** Judges shall appoint special tutors to minors in the following cases:

1. When their interests are opposed to those of their parents, under whose power they are.

2. When the father or the mother loses the administration of the property of the children.

3. When the children acquire property the administration of which their parents do not have.

4. When the interests of the minors are in conflict with those of their general or special tutor.

5. When their interests are opposed to those of another ward with whom they have a common tutor, or with those of an incapacitated person, of whom the tutor is the curator.

6. When they acquire property subject to the condition that it is to be administered by a specified person, or that it is not to be administered by their tutor.

7. When they have property without the jurisdiction of the judge of the tutorship, which cannot be conveniently administered by the tutor.

8. When business or objects are involved, which require a special knowledge, or a separate administration.

**TITLE VIII. OF PERSONS WHO CANNOT BE TUTORS.**

**432 [398].** The following cannot be tutors:

1. Minors.

2. The blind, the dumb.

3. Persons deprived of their reason.

4. Persons who have no domicile in the Republic.

5. Bankrupts, before they have paid their creditors.

6. A person deprived of exercising the paternal power.

7. Persons obliged to discharge, for a lengthy period, or for an indefinite time, an office or commission outside of the territory of the Republic.

8. Women, excepting the grandmother, if she remains a widow.

9. A person who has no occupation, profession or known means of livelihood, or whose bad conduct is a matter of common knowledge.

10. A person sentenced to an infamous penalty.

11. The debtors or creditors of the minor for considerable sums.

12. Persons who are engaged in litigation with the minor as to his status, or his property, and the parents of such persons.

13. A person who has misappropriated the property of some other minor, or has been removed from another tutorship.

14. The relatives who have failed to apply for the appointment of a tutor to a minor who did not have one.

15. Members of the army and navy in active service, including inspectors, physicians and surgeons.

16. Persons who have taken religious vows.

## **TITLE IX. OF CONFIRMATION (DISCERNIMIENTO)<sup>19</sup> OF TUTORSHIP.**

**433 [399].** No one can discharge the functions of a tutor, whether appointed by the parents or by the judges, unless the judge of competent jurisdiction makes an order authorizing the tutor appointed or confirmed to discharge the functions of a tutor.

**434 [400].** Said confirmation of the tutorship (*discernimiento*) shall be made by the judge of the place where the parents of the minor had their domicile on the day of their death.

<sup>19</sup> *Discernimiento* is not defined in Escriche, or Alcubilla. Some of the South American Codes, among which is that of Colombia (Art. 463), define it as "the judicial order authorizing a tutor or curator to enter upon the discharge of his duties."

**435 [401].** If the parents of the minor had their domicile on the day of their death, or on the day it was sought to constitute the tutorship, outside of the Republic, the judge of competent jurisdiction to make said order of confirmation is, in the first case, the judge of the place of the last residence of the parents on the date of their death, and in the second case, the one of the place of their residence at the time.

**436 [402].** If the minors are natural children who have been acknowledged by their parents, or are considered such, the provisions of the next two preceding articles shall be observed with regard to them. If they have been acknowledged by the mother only, or considered such with respect to her, the judge of competent jurisdiction to make the order of confirmation is the judge of the domicile of the mother, or that of the place of her residence, if her domicile is outside of the Republic.

**437 [403].** With regard to foundlings or abandoned minors, the judge of competent jurisdiction to confirm the tutorship is that of the place where they are.

**438 [404].** The judge having jurisdiction to confirm the tutorship has jurisdiction to make all orders pertaining thereto, even though the property of the minor is situated outside of his jurisdiction.

**439 [405].** The change of domicile or residence of the minor or of his parents, in no manner affects the jurisdiction of the judge who confirmed the tutorship; and upon him alone devolves its direction until it terminates as to the ward.

**440 [406].** Before an order issues authorizing the tutor appointed or confirmed by the judge to enter upon the discharge of his duties, he must take an oath that he will faithfully perform the duties of his office.

**441 [407].** The acts performed by a tutor before his confirmation by the judge do not produce any effect whatsoever with regard to the minor; but subsequent confirmation is equivalent to a ratification of such acts, if no damage results therefrom to the minor.

**442 [408].** After the confirmation of the tutorship, the property of the minor shall not be delivered to the tutor



until it has been judicially inventoried and appraised, unless an inventory and appraisal thereof had been made before the confirmation.

## TITLE X. OF THE ADMINISTRATION OF THE TUTORSHIP.

**443** [409]. The administration of a tutorship, confirmed by judges of the Republic, is governed exclusively by the laws of this Code, if the property of the ward is situated in the Republic.

**444** [410]. If the ward has personal or real property without the Republic, the administration of such property and its alienation is governed by the laws of the country where it is situated.

**445** [411]. The tutor is the legal representative of the minor in all civil acts: he manages and administers alone. All acts are performed by him and in his own name, without the intervention of the minor, and without reference to his wishes.

**446** [412]. He must observe the care of a father in the education and support of the minor. He must see to his establishment in life at the proper age, according to the standing and means of the minor, either devoting him to a career of letters, or placing him in a commercial firm, or making him learn a trade.

**447** [413]. The tutor must administer the interests of the minor as a good *paterfamilias*, and he is responsible for any loss resulting from his failure to comply with his duties.

**448** [414]. If tutors exceed the powers of their mandate, or abuse of those powers to the detriment of the person or property of the ward, the latter, his relatives, the Department of Minors, or the police authorities, may apply to the judge of the tutorship for the necessary orders.

**449** [415]. A minor owes to his tutor the same respect and obedience that he owes to his parents.

**450** [416]. The minor must be educated and supported according to his class and means.

**451** [417]. The judge, after having confirmed the appointment of the tutor, shall fix the time within which he is to make the judicial inventory of the property of the minor, according to the nature and situation thereof. The tutor cannot take any steps with regard to the property before the inventory has been made, other than those absolutely necessary.

**452** [418]. Whatever be the provisions of the testament whereby the minor has been instituted an heir, the tutor cannot be relieved from making the judicial inventory.

**453** [419]. If the tutor holds some credit against the minor, he must include it in the inventory; and if he fails to do so, he cannot claim it thereafter, unless at the time of the inventory he was not aware of the debt in his favor.

**454** [420]. He is required to inventory with the same formalities any property which the minor acquires thereafter by succession or under any other title.

**455** [421]. If the tutor enters in the place of a previous tutor, he must immediately ask his predecessor or the latter's heirs for a judicial rendition of the accounts of the tutorship, and the possession of the property of the minor.

**456** [422]. In the preparation of the inventory, the judge must accompany the tutor with one or more relatives of the minor, or other persons acquainted with the business or property of the person who has instituted him his heir.

**457** [423]. The judge shall determine the sum per annum which is to be applied to the education and support of the ward, according to the extent of his property, the income derived therefrom, and the age of the ward, without prejudice to changing it as the needs of the minor increase.

**458** [424]. If there is any surplus from the income of the ward, the tutor shall place it at interest in banks or invest it in public securities, or purchase real property with the knowledge and approval of the judge of the tutorship.

**459** [425]. Deposits in banks of sums belonging to the minors shall be made in their names, and bonds of the public

debt purchased therewith shall likewise be registered in their names.

**460** [426]. A tutor requires judicial authorization and must show the necessity and advisability of the proposed act, in order to make use of deposits in banks, or to sell public securities.

**461** [427]. If the income of the minor is not sufficient for his education and support, the judge may authorize the tutor to make use of a part of the principal, in order that the minor may not lack the proper education.

**462** [428]. If the wards are indigent, and have not sufficient means to meet the expenses of their education and support, the tutor may request authorization from the judge to compel the relatives to furnish support.

**463** [429]. A relative who furnishes support to the ward may have him in his house, and take charge of his education, with the consent of the judge.

**464** [430]. If the indigent wards do not have any relatives, or if the latter are not in a position to furnish them support, the tutor may, with authorization from the judge, place them in some other house, or enter into a contract for their apprenticeship to a trade and support.

**465** [431]. The tutor cannot leave the Republic without first notifying the judge of the tutorship of his intention, in order that the latter may decide whether to continue the tutorship, or appoint another tutor.

**466** [432]. Nor can he send the wards outside of the Republic or to another province, nor take them with him, without authorization from the judge.

**467** [433]. The tutor is answerable for the damage caused by his wards under ten years of age who live with him.

**468** [434]. The tutor cannot alienate the movable or immovable property of the minor, without authorization from the judge of the tutorship.

**469** [435]. He is also forbidden to constitute any real rights therein, or to divide the immovable property which the wards possess in common with others, if the judge has not ordered the division thereof among the co-owners.

**470 [436].** The tutor must endeavor to procure the sale of the thing held by the minor in common with another, as well as the division of any inheritance in which he has an interest.

**471 [437].** Any partition in which the minors are interested, whether of movables or immovables, such as the division of property in which they own an undivided share, must be judicial.

**472 [438].** The judge may grant permission for the sale of the real property of minors, in the following cases:

1. When the income of the ward is insufficient to provide for the expenses of his education and support.

2. When it becomes necessary to pay debts of the ward, the settlement of which does not admit of delay, and there is no other property, nor other resources with which to make payment.

3. When the immovable has deteriorated, and it is not possible to repair it without conveying another immovable or contracting a debt in a considerable amount.

4. When the preservation of the immovable for a longer period would entail the expenditure of large sums of money.

5. When the ward possesses an immovable with another person, and the continuation of the joint possession would be prejudicial to him.

6. When the alienation of the immovable has been agreed to by the previous owner, or delivery thereof has taken place, or all or part of the price has been received.

7. When the immovable forms an integral part of a commercial or industrial establishment, which has come to the ward by inheritance, and which must be alienated with the establishment.

**473 [439].** No authorization from the judge shall be necessary if the alienation of the property of the wards is due to the execution of a judgment, or the demand of a co-owner with the wards of undivided property, or when the alienation is necessary by reason of expropriation for a purpose of public utility.

**474 [440].** Movable property shall be promptly sold, with the exception of that which consists of gold or silver, or

precious jewels; that necessary for the use of the wards, according to their condition in life and means; that which forms an integral part of a commercial or industrial establishment which has come to the wards by inheritance, when said establishment is not sold; family portraits or other objects the purpose of which is to perpetuate the memory of members thereof, such as works of arts or things having a sentimental value.

**475 [441].** The movables and immovables may be sold at public auction only, except when the former are of little value, and a person is found who offers a price for them as a whole which is reasonable, in the opinion of the tutor and judge.

**476 [442].** The judge may dispense with the requirement of holding the sale of movables or immovables at public auction, when in his judgment an extrajudicial sale would be more advantageous on account of some special circumstance, or because a higher price cannot be obtained on the market, provided the price offered exceeds its valuation.

**477 [443].** The tutor requires authorization from the judge in the following cases:

1. To sell all or the greater part of cattle farms of any kind, which form a rural establishment belonging to the minor.

2. To pay passive debts of the minor, if not for small amounts.

3. To incur any extraordinary expenses other than expenses for the repair or preservation of the property.

4. To repudiate inheritances, legacies or donations to the minor.

5. To make compromises or settlements involving the rights of the minors.

6. To purchase immovables for the wards, or any other objects not strictly necessary to their maintenance and education.

7. To contract loans in the name of the wards.

8. To take in lease real property, other than the dwelling house.

9. To remit credits in favor of the minor, even though the debtor be insolvent.

10. To give in lease real property of the minor for terms exceeding five years. Even leases made with authorization from the judge shall be subject to the implied condition that they are to terminate upon the minor attaining his majority, or before, if he or she should contract marriage, even though the lease be for a fixed term.

11. To execute any act or contract in which any relative of the tutor, to the fourth degree, or his natural children or any of his commercial partners, have an interest.

12. To cause to be continued or discontinued the commercial or industrial establishments which the minor has inherited, or in which he has an interest.

**478 [444].** If the establishment is a partnership, the tutor shall consider the dispositions of the testator, the contract of co-partnership, the nature of the partnership, the condition of the business and the place of the establishment, and advise the judge of the tutorship whether the partnership should be continued or dissolved.

**479 [445].** If the judge, in view of the reports of the tutor, decides that the partnership should continue, he shall authorize the tutor to act in the place of the deceased partner of whom the ward is the successor.

**480 [446].** If the judge decides that the partnership should be dissolved at once or after the termination of the period for which it was entered into, he shall authorize the tutor to negotiate, with the concurrence of the other persons interested, the sale or transfer of the partnership interest of the ward, to the surviving partner or partners, or to a third person, with the consent of the partners; and if the sale is not possible, to supervise or procure a final liquidation, and collect what may be due the ward.

**481 [447].** The provisions of the three preceding articles are not applicable if the wards are interested in joint stock companies, or limited stock companies.

**482 [448].** If the establishment is not a partnership, the judge, after thoroughly investigating the business, shall authorize the tutor to direct the transactions and work, to make payments and perform all other acts of a mandatary

with unrestricted powers of administration, either in person or through agents in whom he has confidence, without the necessity of applying for special authorization, except in the case of an extraordinary measure.

**483 [449].** If the judge orders that the establishment cease business at once, or if he holds that its continuation would be prejudicial to the ward, he shall authorize the tutor to dispose of it, at public or private sale, after the value thereof has been appraised or estimated; and until its sale shall be possible, to proceed in such manner as the tutor may find least prejudicial to the minor.

**484 [450].** The tutor is absolutely forbidden to perform the following acts, even though the judge should improperly authorize him therefor:

1. To purchase or lease, in person or through a third party, the movable or immovable property of the ward, or sell or lease to the latter his own property, even though at a public sale; and if he should do so, in addition to the nullity of the purchase, the act shall be considered sufficient to warrant his removal, with all the consequences which the removal of tutors on account of fraudulent conduct entails.

2. To become the transferee of any credits or rights or actions against his wards, unless the transfers are the effect of a legal subrogation.

3. To enter into contracts of any kind whatsoever with his wards.

4. To accept inheritances conferred upon the minor without the benefit of inventory.

5. To dispose under a gratuitous title of the property of their wards, unless it be for the purpose of furnishing support to the relatives of the latter, or small remuneratory gifts, or useful presents.

6. To voluntarily waive the rights of their wards.

7. To make or permit private partitions in which their wards are interested.

8. To lend money belonging to their wards, no matter how advantageous the terms may be.

9. To obligate their wards as sureties in obligations of their own or of others.

**485 [451].** The tutor shall receive for his care and work one-tenth of the net fruits of the property of the minor, taking into consideration, in the liquidation thereof, the sums expended in the production of the fruits, all the charges, public contributions or usufructuary charges to which the patrimony of the minor is subject.

**486 [452].** With regard to the fruits which are pendent at the time the tutorship begins, one-tenth thereof shall be subject to the same rules which govern a usufruct.

**487 [453].** The tutor is not entitled to any compensation whatsoever, and shall return what he may have received as compensation, if he violates the provisions regarding the marriage of tutors or of their children with their wards, whether male or female, or if he is removed from the tutorship on account of grave fault, or if the wards have an income sufficient for their support and education only, in which case said tenth may be reduced or not paid the tutor.

**488 [454].** If the tutor appointed by the parents has received some legacy from them, which may be considered compensation for his labors, he is not entitled to the tenth; but he is at liberty to decline to receive the legacy, or return what he has received and collect the tenth.

## **TITLE XI. OF THE MODES IN WHICH TUTORSHIP TERMINATES.**

**489 [455].** Tutorship terminates:

1. By the death of the tutor, his removal, or his excuse accepted by the judge.
2. By the death of the minor, by his attaining his majority, or by his contracting marriage.

**490 [456].** Upon the death of the tutor, his executors, or his heirs who are of age, must at once give notice thereof to the local judge, and attend in the meantime to what the circumstances may require with respect to the property and person of the minor.



**491 [457].** The following shall be removed from the tutorship:

1. Persons disqualified to act as tutors, the moment the incapacity arises or is discovered.

2. Persons who fail to prepare an inventory of the property of the minor within the term and in the form prescribed by the law, or who have not done so faithfully.

3. Persons who conduct themselves improperly in the tutorship, with respect to the person, or in the administration of the property of the minor.

## **TITLE XII. OF THE ACCOUNTS OF TUTORSHIP.**

**492 [458].** The tutor is obliged to keep a true account, supported by vouchers, of the receipts and expenditures which the administration and the person of the minor may have made necessary, even though relieved by the testator of the obligation of rendering any account.

**493 [459].** The Department of Minors, or the minor himself, if over eighteen years of age, may at any time, in the event of any doubt as to the proper administration by the tutor, upon grounds considered sufficient by the judge, make a demand on him to exhibit the accounts of the tutorship.

**494 [460].** Upon the termination of the tutorship, the tutor or his heirs must render an account of his administration, supported by vouchers, to the minor or to the person representing him, within such time as the judge may order, even though the minor has relieved him of this obligation in his testament.

**495 [461].** If a tutor does not render a true account of his administration, or if he is convicted of *dolus* or grave fault, the minor who was under his charge shall have the right to appraise under oath the loss sustained, and judgment may be rendered against the tutor in the sum sworn to, if it should appear to the judge to conform to what the property of the minor could produce.

**496** [462]. The expense of the rendition of accounts must be advanced by the tutor; but it shall be allowed him by the minor, if the accounts are rendered in proper form.

**497** [463]. The accounts must be rendered in the place where the tutorship is discharged.

**498** [464]. All expenditures properly made shall be allowed the tutor, even though no benefit has resulted to the minor therefrom, and even though he advanced them from his own funds.

**499** [465]. Any agreement between the tutor and a ward who has become of age or emancipated, relating to the administration of the tutorship, or to the accounts thereof, entered into before the expiration of one month after the rendition of the accounts, is void.

**500** [466]. The balances of the accounts of the tutors shall bear interest at the legal rate.

**501** [467]. Persons who have been under tutorship may, upon its termination, demand the immediate delivery of the property in the hands of the tutor which belongs to them, without awaiting the rendition or approval of the accounts.

## TITLE XIII. OF CURATORSHIP.

### CHAPTER I.

#### Curatorship of Incapacitated Persons of Full Age.

**502** [468]. A curator is given to a person of full age incapable of administering his property.

**503** [469]. Insane persons, even though they have lucid intervals, and deaf-mutes unable either to read or write, are incapable of administering their property.

**504** [470]. The declaration of incapacity and the appointment of a curator may be demanded of the judge by the Department of Minors or by any of the relatives of the incapacitated person.

**505** [471]. The judge may, during the proceedings, if he deems it proper, appoint a temporary curator to the property, or an intervenor in the administration of the defendant alleged to be incapacitated.

**506** [472]. If the final judgment in the proceedings declares the defendant to be incapacitated, any subsequent acts of administration which the incapacitated person may perform are void.

**507** [473]. Acts prior to the declaration of incapacity may be annulled, if the cause of the interdiction declared by the judge existed as a matter of public knowledge at the time the acts were performed.

**508** [474]. After the death of a person, his acts *inter vivos* cannot be attacked on the ground of incapacity, unless the incapacity is evidenced by such acts, or unless they were consummated after the proceedings to have his incapacity declared were instituted.

**509** [475]. Persons who have been declared incapacitated are considered minors as to their persons and property. The laws relating to the tutorship of minors apply to the curatorship of incapacitated persons.

**510** [476]. The husband is the legal and necessary curator of his wife when declared incapacitated, and the latter is the curatrix of her husband.

**511** [477]. The sons of full age are the curators of their widowed father or mother when declared incapacitated. If there are two or more sons, the judge shall designate the one who is to assume the curatorship.

**512** [478]. The father, and upon his death or incapacity, the mother, is the curator of their legitimate unmarried or widowed children who have no sons of full age who can discharge the curatorship.

**513** [479]. In all cases in which the father or mother can appoint a tutor to their minor children, they can by testament appoint curators to their children of full age who are insane or deaf-mutes.

**514** [480]. The curator of an incapacitated person who has minor children is also the tutor of the latter.

**515 [481].** The principal obligation of the curator of an incapacitated person is to endeavor to have him recover his capacity, and the income from his property shall be preferentially applied to said object.

**516 [482].** An insane person shall not be deprived of his personal liberty except in cases in which there is fear that, if he is allowed to enjoy it, he will injure himself or others. Nor can he be transferred to an insane asylum without judicial authorization.

**517 [483].** A person who has been declared incapacitated cannot be taken out of the Republic without express judicial authorization, granted upon the advice of at least two physicians, who declare that the measure would be beneficial to his health.

**518 [484].** With the cessation of the causes which made the curatorship necessary, the latter terminates by the judicial declaration dissolving raising the interdiction.

## CHAPTER II.

### *Curators Ad Bona.*

**519 [485].** The number of curators *ad bona* may be two or more, as the administration of the property may require.

**520 [486].** Such curator shall be appointed to the property of a deceased person whose inheritance has not been accepted, if no executor has been appointed to administer it.

**521 [487].** If the deceased has foreign heirs, the curator of the hereditary property shall be appointed in accordance with the provisions of the treaties existing with the nations to which the heirs belong.

**522 [488].** Curators *ad bona* are subject to all the duties of tutors or curators, and are only permitted to perform administrative acts of mere custody and preservation, and those necessary for the collection of credits and the payment of debts.

**523 [489].** It devolves upon curators *ad bona* to exercise the rights of action and conduct the defense of their principals

in court; and persons having claims against the property may direct their actions against the respective curators.

**524** [490]. Curatorship *ad bona* terminates with the extinction of the property, or with the delivery thereof to the persons to whom it belonged.

#### TITLE XIV. OF THE DEPARTMENT OF MINORS.

**525** [491]. The official next friend (*defensor*) of minors must apply for the appointment of tutors or curators to minors or incapacitated persons who have none; and even before their appointment, he may also request, if necessary, that security for the property be given, and that the minors or incapacitated persons be placed with a respectable family.

**526** [492]. The appointment of tutors and curators, as well as the confirmation of the appointment, must be made with the knowledge of the next friend of minors, who may make such objection as he considers proper, based on the ground that the tutors or curators are not proper persons to take charge of the person and property of the minors or incapacitated persons.

**527** [493]. The Department of Minors must intervene in all acts or litigation relating to the tutorship or curatorship, or the performance of the obligations of tutors or curators. It must also intervene in the inventories of the property of the minors and incapacitated persons, and in the alienations or contracts which it may be advisable to make. It may bring the actions which the tutors or curators should institute, if the latter fail to do so. It may demand the removal of the tutors or curators on account of their bad administration, and perform all the acts which correspond to the trust which the law imposes upon it of supervising the administration which tutors and curators exercise over the person and property of minors and incapacitated persons.

**528** [494]. All acts and contracts in which the persons or property of minors and incapacitated persons are involved are void if the Department of Minors has not had any intervention therein.

## BOOK II.

### OF PERSONAL RIGHTS IN CIVIL RELATIONS.

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#### SECTION I. PART FIRST. OF OBLIGATIONS IN GENERAL.

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#### TITLE I. OF THE NATURE AND ORIGIN OF OBLIGATIONS.

**529** [495]. Obligations are: to give, to do, or to refrain from doing something.

**530** [496]. The right, to demand the thing which is the object of the obligation, is a credit, and the obligation to do or refrain from doing something, or to give a thing, is a debt.

**531** [497]. To every personal right there corresponds a personal obligation. There is no obligation which corresponds to real rights.

**532** [498]. Rights which are not transmissible to the heirs of the creditor, as well as obligations not transmissible to the heirs of the debtor, are called in this Code: *rights inherent in the person, obligations inherent in the person*.

**533** [499]. There is no obligation without a cause,<sup>1</sup> that is to say without being derived from one of the facts, or from one of the lawful or unlawful acts, of family relations, or of civil relations.

**534** [500]. Even though the cause be not stated in the obligation, the presumption is that it exists, unless the debtor proves the contrary.

**535** [501]. The obligation is valid even though the cause stated therein is false, if it is based on some other real cause.

<sup>1</sup>Cause: in Civil Law, the consideration or motive for making a contract. Dig. 2, 14.7; Toullier, liv. 3, tit. 3, c. 2 sec. 4; 1 Abb. 28. (Bouvier, Law Dict.)

**536 [502].** An obligation based on an unlawful cause is of no effect. A cause is unlawful when it is contrary to law or public order.

**537 [503].** Obligations do not produce any effect except between the creditor and debtor and their successors to whom they are transmitted.

**538 [504].** If in an obligation a stipulation for the benefit of a third party has been made, the latter may demand the performance of the obligation, if he has accepted it and notified the obligor thereof before its revocation.

**539 [505].** The effects of obligations, with respect to the creditor are the following:

1. To give him the right to have recourse to legal measures to compel the debtor to procure for him that which he has undertaken to procure.

2. To cause it to be procured by another at the cost of the debtor.

3. To recover from the debtor the proper indemnities.

With regard to the debtor, a specific performance of the obligation gives him the right to obtain the proper discharge, or the right to contest the actions of the creditor, if the obligation is extinguished or modified by a legal cause.

**540 [506].** The debtor is liable to the creditor for the damages which the latter sustains by reason of his *dolus* in the performance of the obligation.

**541 [507].** The *dolus* of the debtor cannot be waived at the time the obligation is contracted.

**542 [508].** The debtor is likewise liable for damages sustained by the creditor through his default in the performance of the obligation.

**543 [509].** In order for the debtor to be in default, a judicial or extrajudicial demand must have been made by the creditor, except in the following cases:

1. When it has been expressly agreed that the mere expiration of the period shall produce it.

2. When from the nature and circumstances of the obligation it appears that the designation of the time within which the obligation was to be performed was a determinative motive on the part of the creditor.

**544** [510]. In mutual obligations, one of the obligors is not in default if the other fails to fulfill or refuses to carry out his respective obligation.

**545** [511]. The obligor is also liable for damages,<sup>2</sup> if he has failed to perform the obligation through his own negligence.

**546** [512]. The negligence of the debtor in the performance of an obligation consists in the omission of those measures which the nature of the obligation calls for, and which correspond to the circumstances of persons, of time and of place.

**547** [513]. The debtor is not liable for the damages sustained by the creditor owing to the non-performance of the obligation, when such damages are due to a fortuitous event or *force majeure*, unless the debtor has assumed the liability for the consequences of such fortuitous event, or that it was due to his negligence, or took place after he was already in default which was not due to a fortuitous event or *force majeure*.

**548** [514]. A fortuitous event is one which could not have been foreseen, or which, having been foreseen, could not have been avoided.

## TITLE II. OF NATURAL OBLIGATIONS.

**549** [515]. Obligations are civil or merely natural. Civil obligations are those which give a right to compel their performance. Natural obligations are those which, being based solely upon natural law and equity, do not grant a right of action to enforce their performance, but which, upon performance by the debtor, authorize the retention of what has been given by reason thereof; such are:

<sup>2</sup> *Daños é intereses*: See Art. 553 [519].



1. Obligations contracted by persons who having sufficient judgment and understanding, are nevertheless incapable under the law to bind themselves, such as a married woman, in cases in which she requires the authority of the husband, and adult minors.

2. Obligations which arise as civil obligations, and are extinguished by prescription.

3. Those derived from juridical acts, which lack the solemnities which the law requires for them to produce civil effects; such as the obligation to pay a legacy left by a testament in which essential formalities have been omitted.

4. Those which have not been recognized in court owing to lack of evidence, or when the suit has been lost through the error or malice of the judge.

5. Those arising out of an agreement in which all the general conditions required in the matter of contracts are present; but to which the law has denied any right of action, for reasons of public policy; such are gambling debts.

**550** [516]. The effect of natural obligations is to bar an action to recover what has been paid, when the payment thereof was voluntarily made by a person who had the legal capacity to make it.

**551** [517]. The partial performance of a natural obligation does not give it the character of a civil obligation; nor can the creditor demand payment of the remainder of the obligation.

**552** [518]. Bonds, mortgages, pledges and penal clauses constituted by third persons to secure natural obligations, are valid, and the performance of these accessory obligations may be enforced.

### **TITLE III. OF DAMAGES IN OBLIGATIONS IN WHICH SUMS OF MONEY ARE NOT THE OBJECT.**

**553** [519]. Damages (*daños é intereses*) are the amount of the loss sustained, and the profit which the creditor of the

obligation has failed to receive, by reason of the non-performance of the obligation in due time.

**554** [520]. Compensation for damages includes only those which are an immediate and necessary consequence of the non-performance of the obligation.

**555** [521]. Even though the non-performance of the obligation is due to the *dolus* of the debtor, the damages include only those occasioned by him, and not those which the creditor has sustained as to his other property.

**556** [522]. If it has been agreed in the obligation that a certain sum of money is to be paid in the event of its non-performance, a larger or smaller amount cannot be paid.

#### **TITLE IV. OF PRINCIPAL OBLIGATIONS AND OF ACCESSORY OBLIGATIONS.**

**557** [523]. Of two obligations, one is the principal and the other the accessory, when one of them is the reason for the existence of the other.

**558** [524]. Obligations are principal or accessory with relation to their object, or with relation to the persons bound. Obligations are accessory with regard to the object thereof, when they are contracted to assure the performance of a principal obligation; as are penal clauses. Obligations are accessory as to the persons bound, when such persons contract them as guarantors or sureties. Not only are all accessory obligations accessory to the obligation, but the accessory rights of the creditor, such as the pledge or mortgage, are so also.

**559** [525]. Upon the extinguishment of the principal obligation, the accessory obligation is extinguished also, but the extinguishment of the accessory obligation does not carry with it that of the principal obligation.

**560** [526]. If the accessory clauses of an obligation are impossible clauses, with appearances of suspensive conditions, or are prohibited conditions, their nullity annuls the principal obligation.

## TITLE V. OF CONDITIONAL OBLIGATIONS.

### CHAPTER I.

#### Of Conditional Obligations in General.

**561** [527]. An obligation is pure when the fulfillment thereof does not depend on any condition whatsoever.

**562** [528]. An obligation is conditional, when the acquisition of a right, or the resolution<sup>3</sup> of a right already acquired, is made to depend therein on an uncertain and future event, which may or may not happen.

**563** [529]. A condition which relates to an event which is certain to happen, does not import a real condition, nor does it suspend the obligation, but only defers the demandability thereof.

**564** [530]. A condition involving a thing which is impossible, contrary to good morals, or prohibited by law, renders the obligation void.

**565** [531]. The following conditions are expressly prohibited:

1. To live always in a specified place, or to subject the selection of a domicile to the will of a third person.
2. To change or not change one's religion.
3. To marry a specified person, or to marry with the approval of a third person, or at a certain place or within a certain time, or not to marry.
4. To live in perpetual or temporary celibacy, or not marry a specified person, or to obtain a divorce.

<sup>3</sup> Resolution, in the Civil Law, is an act by which a contract which existed and was good is rendered null. Resolution differs essentially from rescission. The former presupposes the contract to have been valid, and it is owing to a cause posterior to the agreement that the resolution takes place; while rescission, on the contrary, supposes that some vice or defect annulled the contract from the beginning. Resolution may be by consent of the parties or by the decision of a competent tribunal; rescission must always be by the judgment of a court; 7 Troplong, *de la Vente*, n. 689; 7 Toullier 551. (Bouvier, Law Dict.)

**566** [532]. A condition to refrain from doing a thing that is impossible, does not prejudice the validity of the obligation.

**567** [533]. Conditions must be fulfilled in the manner in which the parties have, in all likelihood, desired and intended that they should be performed.

**568** [534]. Prestations<sup>4</sup> the object of which is the fulfillment of a condition are always indivisible.

**569** [535]. The performance of conditions is indivisible, even though the object of the condition be a divisible thing. The partial fulfillment of a condition does not bring about a partial performance of the obligation.

**570** [536]. When in an obligation a number of conditions have been connected by a disjunctive particle, the performance of one of them is sufficient to perfect the obligation; but if the conditions have been connected by a conjunctive particle, if the performance of but one of them is omitted, the obligation is of no effect.

**571** [537]. Conditions are considered as performed when the parties who benefit from their performance, voluntarily waive them; or when, being dependent on the voluntary act of a third person, the latter refuses to perform the act, or refuses his consent; or when the person interested, who does not benefit from its fulfillment, resorts to dolus to prevent its performance.

**572** [538]. The condition to which a person has bound himself is deemed to have been fulfilled, if such person willfully prevents its performance.

**573** [539]. An obligation contracted under the condition that an event shall happen within a stated time, lapses, if the time passes without the event having occurred, or when it becomes certain that the condition cannot be performed.

<sup>4</sup> *Prestación*. The Oxford English Dictionary defines the word *prestacion* as follows: "The action of paying in money or service, what is due by law or custom, or in recognition of feudal superiority; a payment or the performance of a service so imposed or exacted; also, the performance of something promised." Alcubilla, *Diccionario de la Administración española*, defines *prestación* as follows: a generic term used ordinarily in law to indicate the contents of obligations imposed by law or a contract; it signifies that which the obligee should give or perform.

**574 [540].** An obligation contracted under the condition that an event shall not take place within a stated time, is fulfilled if the time expires without the event having occurred.

**575 [541].** If no time has been fixed, the condition must be performed within the time that it is likely the parties understood that it was to have been performed. It shall be considered as performed when it is certain that the event will not happen.

**576 [542].** An obligation contracted under a condition which makes the force thereof depend absolutely on the will of the debtor, is void; but if the condition makes the obligation depend on an act which the debtor has the power to perform or not, the obligation is valid.

**577 [543].** The condition having been fulfilled, the effects of the obligation are retroactive to the date upon which it was contracted.

**578 [544].** The rights and obligations of the creditor or debtor who dies before the performance of the condition, descend to his heirs.

## CHAPTER II.

### Of Obligations Subject to a Suspensive Condition.

**579 [545].** An obligation subject to a suspensive condition is one which is to exist or not exist, according to whether a future and uncertain event occurs or does not occur.

**580 [546].** While the suspensive condition is pending, the creditor may adopt all measures of preservation necessary and permitted by the law to guarantee his interests and rights.

**581 [547].** The debtor may recover from the creditor whatever he paid him before the fulfillment of the condition.

**582 [548].** If the condition is not fulfilled, the obligation is considered as never having been established; and if the creditor has been placed in possession of the thing which was

the object of the obligation, he must return it with the increase it may have acquired in itself, but not the fruits which he has collected.

**583 [549].** If the obligation involves fungible things,<sup>5</sup> the fulfillment of the condition has no retroactive effect as to third persons, and has such effect in cases of fraud only.

**584 [550].** If movables are involved, the fulfillment of the condition has no retroactive effect as to third persons, unless they are possessors in bad faith.

**585 [551].** If immovable property is involved, the fulfillment of the condition has no retroactive effect as to third persons, but is effective only from the date of the delivery of the immovable property.

**586 [552].** In cases in which the third possessors of the property subject to the conditional obligation are possessors in good faith, there is reserved to the creditor the right to bring an action against the debtor to recover payment of an equivalent amount and compensation for damages.

### CHAPTER III.

#### Of Obligations Subject to a Resolutive Condition.

**587 [553].** An obligation is established subject to a resolutive condition, if the parties subordinate the resolution<sup>6</sup> of an acquired right to an uncertain and future act.

**588 [554].** If the resolutive condition is not fulfilled, or when it becomes certain that it will not be fulfilled, the right subordinated thereto is irrevocably acquired as if no condition had ever existed.

**589 [555].** Upon the fulfillment of the resolutive condition whatever has been received by reason of the obligation shall be returned.

<sup>5</sup>For the difference between consumable and fungible things, see Arts. 2358 [2324] and 2359 [2325].

<sup>6</sup>See note to Art. 562.

**590** [556]. If the thing which is the object of the obligation has perished, the parties cannot demand anything of each other.

**591** [557]. If the resolutive condition is fulfilled the fruits collected in the intermediate time are not owing.

## CHAPTER IV.

### Of Charges Imposed for the Acquisition or Resolution of Rights.

**592** [558]. The charges<sup>7</sup> imposed do not prevent the acquisition of a right, nor its exercise, if not imposed as a suspensive condition. In case of doubt it is held that they do not import a condition.

**593** [559]. If there is a resolutive condition effective in case of the non-fulfillment of the charges imposed, the decision of a judge shall be necessary to deprive the beneficiary of the acquired right.

**594** [560]. If there is no resolutive condition effective in case of the non-fulfillment of the charges imposed, the loss of the property acquired does not take place; and the persons interested have the right reserved to them to bring action against the grantee to compel him to satisfy the charges imposed.

**595** [561]. If no time has been fixed within which the charges are to be satisfied, they must be satisfied within the term which the judge may fix.

<sup>7</sup> The term *cargos* (charges) is employed in this Code in the sense of the *mode* of the Roman Law. (Note in official edition of Code).

*Modo* is used in a number of the South American Codes, the Code of Colombia defining it as follows: "If anything be assigned to a person in order to hold it as his own, with the obligation of applying it to a special purpose, as that of making certain works or assuming certain charges, this application is a *mode* and not a suspensive condition. The mode, consequently, does not suspend the acquisition of the things granted." (Colombia Civ. C., 1147). Escriche in his *Diccionario de Legislación y Jurisprudencia*, says "A mode is the purpose for which a thing is done, as, for example, a legacy, a trust, a convention." Nicaragua, Uruguay and El Salvador have also adopted the term *mode*, defining it in their respective Civil Codes in the same manner as Colombia.

**596** [562]. The obligation to satisfy the charges imposed for the acquisition of rights, descends to the heirs of the person upon whom they have been imposed, unless he alone is able to satisfy them, as inherent in his person. If the person charged dies without satisfying the charges, the acquisition of the right is void, and the property reverts to the person who imposed the charges, or to his legal heirs.

**597** [563]. The reversion has no effect as to third persons, except in the cases in which a resolutive condition can have such effect.

**598** [564]. If the act which constitutes the charge is impossible, unlawful, or immoral, the instrument imposing the charge is void.

**599** [565]. If the act is not absolutely impossible, but becomes so subsequently without the fault of the grantee, the grant subsists, and the property is acquired free from any charge.

## TITLE VI. OF LIMITED OBLIGATIONS.

**600** [566]. An obligation is limited when the exercise of the right corresponding thereto is subject to a suspensive or resolutive term.<sup>8</sup>

**601** [567]. The suspensive or resolutive term may be certain or uncertain. It is certain, when fixed to terminate in a specified year, or month, or on a stated day, or if it begins from the date of the obligation, or from some other certain date.

**602** [568]. The term is uncertain, if fixed with relation to a future necessary act, to terminate the day such necessary act takes place.

**603** [569]. Whatever be the expressions employed in the obligation, a term and not a condition is considered present whenever the future act is necessary even though uncertain, and it is understood that a condition and not a term is present, when the future act is uncertain.

<sup>8</sup> Howe, *Studies in the Civil Law*, 2d ed. p. 244.



**604 [570].** The term embodied in obligations is presumed to have been established for both parties, unless, on account of the object of the obligation or other circumstances, it appears that it was included in favor of the debtor or creditor. Payment cannot be made before the time stated, except by mutual consent.

**605 [571].** The debtor of an obligation who has made payment before the term stated is supposed to have known the time, and cannot recover what he has paid; but if he did so through ignorance of the term, recovery shall lie.

**606 [572].** An insolvent debtor and the persons representing him cannot claim the benefit of the term for the performance of the obligation.

**607 [573].** In limited obligations in which the term is certain, the rights are transmissible, even though the term is so long that the creditor cannot survive the date of maturity.

## OF OBLIGATIONS WITH RELATION TO THEIR OBJECT.

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### TITLE VII. OF OBLIGATIONS TO GIVE.

#### CHAPTER I.

##### Of Obligations to give Certain Things.

**608 [574].** An obligation to give is one the object of which is the delivery of a thing, movable or immovable, for the purpose of constituting real rights therein, or of granting merely the use or tenancy thereof, or to return it to its owner.

**609 [575].** An obligation to give certain things includes all the accessories of such things, even though not mentioned in the instruments, or even though temporarily separated therefrom.

**610 [576].** The debtor of the obligation is liable to the creditor for damages due to a failure to take the proper steps

to deliver the thing, at the place and time stipulated, or at the place and time fixed by the judge in the absence of an express stipulation.

**611** [577]. The creditor does not acquire any real rights in the thing before it is delivered.

**612** [578]. If the obligation to give a certain thing is to transfer real rights therein, and the thing is lost without the fault of the debtor, the obligation is dissolved as to both parties.

**613** [579]. If the thing is lost through the fault of the debtor, the latter is liable to the creditor for its equivalent and for damages.

**614** [580]. If the thing deteriorates without the fault of the debtor, the deterioration runs for his account, and the creditor may dissolve the obligation, or receive the thing in the condition in which it is, with a proportionate reduction in price, if any has been stipulated.

**615** [581]. If the thing deteriorates through the fault of the debtor, the creditor is entitled to demand an equivalent thing with compensation for damages, or to receive the thing in the state in which it is, with compensation for damages.

**616** [582]. If the thing has improved or increased, even though not owing to the expenditure of money thereon by the debtor, the latter may demand a higher price from the creditor, and if the creditor does not agree, the obligation shall be dissolved.

**617** [583]. All fruits, whether natural or civil, collected before the delivery of the thing, belong to the debtor; but the fruits pendent at the time of the delivery belong to the creditor.

**618** [584]. If the obligation is to give a certain thing for the purpose of restoring it to its owner, and the thing is lost without the fault of the debtor, the thing is lost to its owner, the rights of the latter to the day of the loss not being hereby affected, and the obligation shall be dissolved.

**619** [585]. If the thing is lost through the fault of the debtor, the provisions of Article 613 [579] shall be observed.

**620 [586].** If it deteriorates without the fault of the debtor, the owner thereof shall receive it in the condition in which it may be and the debtor shall not be liable for damages.

**621 [587].** If it deteriorates through the fault of the debtor, the provisions of Article 615 [581] shall be observed.

**622 [588].** If the thing has improved or increased without the debtor having expended any money or labor thereon, or another person having worked thereon for him, it shall be returned to the owner with the increase or improvement; and the debtor is not entitled to recover anything.

**623 [589].** If there are any improvements or increase which the debtor who possessed the thing in good faith has added thereto with his money or labor, or the labor of others for him, he is entitled to indemnity in the just value of the necessary or useful improvements, according to the valuation thereof to be made at the time of the restitution, provided he had not been forbidden to make improvements. If the improvements are voluntary, the debtor, even though a possessor in good faith, is not entitled to any indemnity whatsoever. If the debtor be a possessor in bad faith, he shall be entitled to the indemnity for the necessary improvements.

**624 [590].** The gathered fruits, whether natural or civil, belong to the debtor, if a possessor in good faith. A debtor who has had possession in bad faith, is obliged to return the thing with the fruits gathered and pendent, without being entitled to any indemnity whatsoever.

**625 [591].** Necessary improvements are those without which the thing could not be preserved. Useful improvements are not only those indispensable for the preservation of the thing, but also those which are of evident benefit to any possessor thereof. Voluntary improvements are those which constitute mere luxuries or are for purposes of recreation, or benefit exclusively the person who made them.

**626 [592].** When the obligation consists of giving certain things for the purpose of transferring or constituting real rights, and the thing is a movable, if the debtor delivers it to another, by transfer of ownership or the constitution of a pledge, the creditor, even though his title be of a prior date,

has no right of action against possessors in good faith, but only against those in bad faith. Bad faith consists in the knowledge of the obligation of the debtor.

**627 [593].** If the thing is a movable, and a number of creditors appear to whom the obligor has undertaken to deliver it, without having actually delivered it to any one of them, the creditor whose instrument bears the earliest date shall be preferred.

**628 [594].** If the thing is an immovable and the debtor delivers it to another for the purpose of conveying to him the ownership thereof, the creditor has no right of action against a third person who was in ignorance of the prior obligation of the debtor; but he has a right of action against those who entered upon the possession of the thing, knowing of such obligation.

**629 [595].** If the delivery was made to a person acting in good faith, the creditor has the right to demand another equivalent thing of the debtor and to recover all damages.

**630 [596].** If the thing is an immovable, and a number of creditors appear to whom the same debtor has undertaken to deliver it, without having actually delivered the thing to any one of them, the creditor whose public instrument bears the earlier date shall be preferred.

**631 [597].** With regard to third persons, when the purpose of obligations to give certain things is to restore them to their owner, if the thing is a movable and the debtor delivers it to another by transfer of ownership or as a pledge, the creditor has no right of action against possessors in good faith, except only when the thing has been stolen from him or been lost. He has a right of action in any case against possessors in bad faith.

**632 [598].** If the thing is a movable, and a number of creditors appear to whom the debtor has undertaken to deliver the thing under a transfer of ownership or as a pledge, without having delivered the thing, the creditor to whom the ownership thereof belongs is preferred.

**633 [599].** If the thing is an immovable, the creditor has a real right of action against the third persons who have

apparently acquired real rights therein, or who hold possession thereof under some contract entered into with the debtor.

**634 [600].** When the obligation is to give certain things for the purpose of transferring the use thereof only, the rights are governed by the provisions appearing under the title *Of Lease*. When the obligation is to transfer solely the tenancy of the thing, the rights are governed by the provisions contained in the title *Of Deposit*.

## CHAPTER II.

### Of Obligations to give Uncertain Things.

**635 [601].** When the obligation contracted is to give an uncertain thing which is not fungible, the debtor has the right to select the thing.

**636 [602].** In the performance of these obligations, the debtor is not permitted to select a thing of the worst quality of the species, nor the creditor one of the best quality if it has been agreed to leave the selection to him.

**637 [603].** After the thing has been individualized by the selection of the debtor or creditor, the provisions regarding obligations to give certain things shall be observed.

**638 [604].** Before the individualization of the thing, the debtor cannot relieve himself from the performance of the obligation on account of the loss or deterioration of the thing, due to *force majeure* or a fortuitous event.

**639 [605].** An obligation to give uncertain things which are not fungible, and are determined solely by their species or quantity, entitles the creditor to demand the performance of the obligation with damages on account of the delay of the debtor, if he be in default, or to dissolve the obligation, and recover damages.

## CHAPTER III.

## Of Obligations to Give Amounts of Things.

**640** [606]. An obligation to give amounts of things is the obligation to give things by number, weight or measure.

**641** [607]. In these obligations the debtor must give, at the proper time and place, an amount corresponding to the object of the obligation, of the same kind and quality.

**642** [608]. When the object of the obligation is to return amounts of things received, the creditor has the right to demand of a debtor in default a like amount of the same kind and quality, with damages, or the value thereof, according to the market price at the place and on the date of the maturity of the obligation.

**643** [609]. The amounts are individualized as certain things, after they have been counted, weighed or measured by the creditor.

**644** [610]. When the purpose of the obligation is to constitute or transfer real rights, and a thing which has already been individualized is lost or deteriorates totally through the fault of the debtor, the creditor may either demand an equal amount of the same kind and quality, in addition to damages, or dissolve the obligation and recover damages.

**645** [611]. When it is lost or deteriorates in part only, without the fault of the debtor, the creditor has a right to demand the delivery of the remaining amount which has not deteriorated, with a proportionate reduction in the price, if fixed, or to dissolve the obligation.

**646** [612]. When it is lost or deteriorates in part only through the fault of the debtor, the creditor may either demand the delivery of the amount remaining which has not deteriorated, and of that corresponding to the amount lacking or which has deteriorated, with damages, or dissolve the obligation with indemnity for damages.

**647** [613]. When the purpose of the obligation is to return amounts received, and the amount has already been

individualized, and is lost or deteriorates entirely through the fault of the debtor, the creditor may demand either another equal amount of the same kind and quality with damages, or the value thereof together with damages.

**648 [614].** When it is lost only in part without the fault of the debtor, the creditor may require only the delivery of the remaining amount. When it deteriorates in part only without the fault of the debtor, the creditor shall receive the part deteriorated with that not deteriorated, in the condition in which they may be.

**649 [615].** When it is lost or deteriorates only in part through the fault of the debtor, the creditor has the right to demand either the delivery of the remaining part which has not deteriorated, and that corresponding to the amount lacking or which has deteriorated, with indemnity for damages, or the delivery of the remaining amount which has not deteriorated, and the value of that lacking or deteriorated, with indemnity for damages, or to dissolve the obligation with indemnity for damages.

## CHAPTER IV.

### Of Obligations to Give Sums of Money.

**650 [616].** The provisions relating to obligations to give uncertain things which are not fungible, determined solely by their species, and to obligations to give amounts of things which have not been individualized, are applicable to obligations to give sums of money.

**651 [617].** When it has been stipulated in the act whereby the obligation was constituted to give money which is not legal tender in the Republic, the obligation must be considered as one to give amounts of things.

**652 [618].** If the day on which the delivery of the money is to be made is not stated in the act whereby the obligation is constituted, the judge shall determine the time within which the debtor is to make it. If the place where the obligation is to be performed has not been specified, it must

be fulfilled at the place where it was contracted. In any other case the delivery of the sum of money must be made at the place of the domicile of the debtor at the time of the maturity of the obligation.

**653 [619].** When the obligation of the debtor is to deliver a sum of a certain kind or quality of money which is national currency, he discharges the obligation by delivering the kind of money specified, or another kind of national money at the rate of exchange prevailing in the place the day on which the obligation matures.

**654 [620].** If the obligation authorizes the debtor to pay it when able to do so, or when he shall have means therefor, the judges shall, on the petition of a party, fix the time when he is to pay it.

**655 [621].** The obligation may bear interest and the rate agreed upon between the debtor and the creditor is valid.

**656 [622].** A debtor in default owes the interest agreed on in the obligation from the date of the maturity thereof. If no interest has been stipulated, he owes the legal interest which the special laws may have determined. If the legal rate of interest has not been determined, the judges shall fix the interest he is to pay.

**657 [623].** Compound interest is not due, unless it be under a subsequent obligation, stipulated between the debtor and creditor, whereby the accumulation thereof to the principal is authorized, or when the debt having been judicially liquidated with interest, the judge orders the resulting sum paid, and the debtor defaults in payment.

**658 [624].** The receipt of the principal by the creditor without any reservation whatsoever regarding interest, discharges the obligation of the debtor with regard thereto.

## **TITLE VIII. OF OBLIGATIONS TO DO OR TO REFRAIN FROM DOING.**

**659 [625].** A person obliged to do something, or to render a service, must perform the act within a proper time, and in the manner in which it was the intention of the parties that



the act should be performed. If he performs it in any other manner it shall be considered not performed, or what may have been improperly done may be destroyed.

**660** [626]. The act may be performed by a person other than the debtor, unless the person of the debtor has been selected to do it on account of his industry, skill, or personal qualifications.

**661** [627]. If the act becomes impossible without the fault of the debtor, the obligation is extinguished as to both parties, and the debtor must return to the creditor what he has received by reason thereof.

**662** [628]. If the impossibility is due to the fault of the debtor, the latter is obliged to indemnify the creditor for damages.

**663** [629]. If the debtor does not desire or is unable to perform the act, the creditor may have recourse to compulsory process unless violence against the person of the debtor would be necessary. In the latter case, the creditor may demand indemnity for damages.

**664** [630]. If the act could be executed by another, the creditor may be authorized to execute it for the account of the debtor, either in person or through a third party, or demand indemnity for damages on account of the nonperformance of the obligation.

**665** [631]. The debtor cannot exempt himself from the performance of the obligation by offering to pay the damages.

**666** [632]. When the obligation is to refrain from doing something, and the omission of the act becomes impossible without the fault of the debtor, or if the latter has been compelled to perform it, the obligation becomes extinguished as in the case of art. 661 [627].

**667** [633]. When the act is performed through the fault of the debtor, the creditor has the right to demand the destruction of whatever may have been done, or authority to destroy it at the expense of the debtor.

**668** [634]. When it is not possible to destroy whatever has been done, the creditor has the right to demand compensation for the damages sustained by him through the performance of the act.

**TITLE IX. OF ALTERNATIVE OBLIGATIONS.**

**669** [635]. An alternative obligation is that the object of which is one of a number of prestations<sup>9</sup> which are independent and distinct from each other in the instrument, so that the election to be made among them is from the beginning indeterminate.

**670** [636]. The person alternatively bound to a number of prestations is only bound to perform one of them entirely, whether the prestation be of a thing or an act, or the place of payment, or of things, acts, and the place of delivery.

**671** [637]. In alternative obligations, the election of the prestation of one of the objects comprised in the obligation is vested in the debtor.

**672** [638]. If one of the prestations could not be the object of the obligation, the other is due the creditor.

**673** [639]. If one of the objects promised cannot be carried out even though on account of the fault of the debtor, or for any other cause whatsoever, the one remaining must be performed. If none of them can be carried out, and one of them has become impossible through the fault of the debtor, it is the obligation of the latter to pay the value of the one which last became impossible.

**674** [640]. When the alternative obligation consists of annual prestations, the choice made for one year is not binding for the other years.

**675** [641]. When the election is left to the creditor, and one of the things has been destroyed through the fault of the debtor, the creditor may demand either the thing which remains, or the value of that which has been lost. When both have been lost through the fault of the debtor, the creditor may demand the value of either. The same provision shall be observed if the prestations comprised in the obligation are not to deliver things, in which case the judge shall estimate the value of that which, having been elected by the creditor, cannot be performed.

<sup>9</sup>See note to Art. 1683 [1649].

**676** [642]. When the prestations have become impossible without the fault of the debtor, the obligation is extinguished.

## **TITLE X. OF OPTIONAL OBLIGATIONS.**

**677** [643]. An optional obligation is one which having but a single prestation as its object, gives the debtor the power to substitute said prestation by another.

**678** [644]. The nature of an optional obligation is determined solely by the principal prestation which forms the object thereof.

**679** [645]. When the optional obligation is void by reason of a vice inherent in the principal prestation, it is also void even though the accessory prestation have no vice whatsoever.

**680** [646]. The creditor of an optional obligation may include in his demand for payment the principal prestation only.

**681** [647]. An optional obligation is extinguished when the thing which forms the object of the principal prestation ceases to exist without the fault of the debtor, before the latter is in default, or when the performance thereof has become impossible, even though the object of the accessory prestation has not ceased to exist, and the delivery thereof is possible.

**682** [648]. If the object of the principal prestation has ceased to exist or has become impossible through the fault of the debtor, the creditor may demand the value of that which has ceased to exist or the thing which was the object of the accessory prestation.

**683** [649]. Neither the loss nor deterioration of the thing, nor the impossibility of the act or of the omission which constitutes the object of the accessory prestation has any bearing whatsoever on the principal prestation.

**684** [650]. The nullity of a juridical act by reason of the object of the accessory prestation, does not carry with it the nullity of the principal prestation.

**685** [651]. In case of doubt as to whether an obligation is alternative or optional, it shall be considered alternative.

**TITLE XI. OF OBLIGATIONS WITH A PENAL CLAUSE.**

**686** [652]. A penal clause is that whereby a person, in order to secure the performance of an obligation, subjects himself to a penalty or fine in the event of delaying or failing to perform the obligation.

**687** [653]. The only object of a penal clause can be the payment of a sum of money, or any other prestation which can be the object of obligations, whether for the benefit of the creditor or of a third party.

**688** [654]. The penalty stipulated is incurred by the debtor who fails to perform the obligation within the term agreed on, even though he was prevented from so doing by some just cause.

**689** [655]. The penalty or fine imposed in the obligation takes the place of compensation for damages, when the debtor has delayed performance; and the creditor is not entitled to any other indemnity even when he proves that the penalty is not sufficient indemnity.

**690** [656]. In order to demand the penalty, the creditor is not obliged to prove that he has sustained damages, nor can the debtor release himself from paying it by proving that the creditor has not sustained any loss.

**691** [657]. The debtor incurs the penalty, in obligations to refrain from doing something, the moment he performs the act which he bound himself to refrain from performing.

**692** [658]. The debtor cannot release himself from performing the obligation by paying the penalty, unless he has expressly reserved this right.

**693** [659]. But the creditor cannot demand both the performance of the obligation and the penalty, but only one of the two things, as he elects, unless it appears that a penalty on account of mere delay had been stipulated, or that the payment of the penalty should not be understood as extinguishing the principal obligation.

**694** [660]. When the debtor performs only a part of the obligation, or performs it in an irregular manner, or at a

place or time other than that stipulated, and the creditor accepts it, the penalty must be reduced in proportion, and the judge may arbitrate it if the parties fail to agree.

**695** [661]. Whether the principal obligation be divisible or indivisible, each of the co-debtors or heirs of the debtor incurs the penalty only in proportion to his share, provided the obligation of the penal clause is divisible.

**696** [662]. When the obligation of the penal clause is indivisible, or when it is solidary but divisible, each of the co-debtors, or of the coheirs of the debtor, is bound to pay the entire penalty.

**697** [663]. The nullity of the principal obligation carries with it the nullity of the penal clause; but the nullity of the latter leaves the principal obligation in force.

**698** [664]. The obligation of the penal clause remains in force, however, even though the obligation be void, if contracted for another person, in the event of the latter failing to comply with his promise.

**699** [655]. If the principal obligation is extinguished without the fault of the debtor, the penal clause is also extinguished.

**700** [666]. The penal clause is valid, even though inserted to insure the performance of an obligation which cannot be enforced judicially, provided it be not condemned by the law.

## **TITLE XII. OF DIVISIBLE AND INDIVISIBLE OBLIGATIONS.**

### **CHAPTER I.**

#### **Of Divisible Obligations.**

**701** [667]. Obligations are divisible when their object consists of prestations<sup>10</sup> susceptible of partial performance. They are indivisible, if the prestations cannot be performed except as a whole.

<sup>10</sup> See note to Art. 1683 [1649].

**702 [668].** When solidarity is stipulated it does not give the obligation the character of an indivisible obligation, nor does the indivisibility of the obligation make it solidary.

**703 [669].** Obligations to give are divisible when the object thereof is the payment of a sum of money or of other amounts, or when the object thereof being the delivery of uncertain things which are not fungible, they comprise a number thereof of the same kind equal to the number of creditors or debtors, or their multiple.

**704 [670].** Obligations to do are divisible when their object is the prestation of acts determined solely by a certain number of days' work, or when they consist of a given work, according to stated measurements set forth in the obligation, such as the construction of a wall, stipulated by meters; but when the construction of the work is not by measure, the obligation is indivisible.

**705 [671].** In obligations to refrain from doing, the divisibility or indivisibility of the obligation is decided by the natural character of the prestation, in each particular case.

**706 [672].** Alternative obligations the object of which consists of prestations of an opposed nature, are not considered as divisible or indivisible until the creditor has made his choice, or the debtor has done so with the knowledge of the creditor.

**707 [673].** Divisible obligations, when there is but a single creditor and a single debtor, must be performed as if they were indivisible obligations, The creditor cannot be compelled to receive partial payments, nor the debtor to make them.

**708 [674].** When the obligation is contracted between a number of creditors and a single debtor, or between a number of debtors and a single creditor, the debt is divided among them in equal parts, in the absence of an agreement to the contrary.

**709 [675].** When in divisible obligations there are a number of creditors or a number of debtors, whether original or by succession, each of the creditors has the right to demand only his share of the credit; and the debtor who has paid the

entire debt to a single one of the creditors, is not exonerated from paying the share of each creditor; and *vice versa*, each one of the debtors can be compelled only to pay his part of the credit, and may recover any amount in excess thereof paid by him.

**710 [676].** From the last part of the preceding article is excepted a case in which one of the debtors or one of the coheirs is charged with the payment of the entire debt, either under the terms of the obligation, or on account of an agreement to that effect in the division of the inheritance; in which event the debtor may be sued for the entire obligation, without prejudice to his rights as to the other co-debtors or coheirs.

**711 [677].** When one or more of the co-debtors is insolvent, the other co-debtors are not obliged to pay the part of the debt owed by the former.

**712 [678].** The suspension of prescription as to one of the debtors, does not benefit nor prejudice the other creditors or debtors.

## CHAPTER II.

### Of Indivisible Obligations.

**713 [679].** Every obligation to give a certain thing is indivisible.

**714 [680].** Obligations to do something, with the exception of those comprised in Art. 704 [670], are likewise indivisible.

**715 [681].** An obligation to deliver is indivisible, when the tradition partakes of the character of a mere act, not of those enumerated in Art. 704 [670], or a delivery not comprised under Art. 703 [669].

**716 [682].** When the obligations, whether divisible or indivisible, have as accessory thereto a pledge or mortgage, the creditor is not obliged to return the pledge nor to cancel the mortgage, either in whole or in part, until the entire debt has been paid.

**717 [683].** An obligation the object of which is the constitution of a predial servitude is indivisible.

**718 [684].** Indivisible obligations cannot be constituted with respect to an object owned in common by a number of persons, without the consent of all of the co-owners.

**719 [685].** Any indivisible abstention renders the obligation indivisible. Only the person responsible for the violation of the right can be required to satisfy the indemnity claimed by the creditor, the other co-debtors being released from liability therefor.

**720 [686].** Any of the original creditors, or the creditors by succession or contract, may demand of each of the co-debtors, or of their heirs, the full performance of an indivisible obligation.

**721 [687].** It is only with the consent of all the creditors that an indivisible obligation can be remitted or be made the subject of composition.

**722 [688].** When an indivisible debt has prescribed in favor of one of the debtors against one of the creditors, all of the former are benefited, and all of the latter prejudiced; and when the prescription has been interrupted in favor of one of the creditors against one of the debtors, it benefits all of the former and prejudices all of the latter.

**723 [689].** The relations of joint creditors *inter se*, or of joint debtors *inter se*, after one of them has discharged a divisible or indivisible obligation, are regulated as follows:

1. Each of the joint creditors must pay an equal or unequal quota, determined in the instrument constituting the obligation, or in the contracts which they may have entered into *inter se*.

2. In the absence of instruments, or if nothing has been provided as to the division of the credit or of the debt among the joint creditors and debtors, the cause for having contracted the obligation jointly, the relations of the persons interested *inter se*, and the circumstances of each case, shall be taken into consideration.

3. When it is not possible to establish the relations of the joint creditors or debtors *inter se*, it is understood that they



are equally interested, and that each person constitutes one creditor or one debtor.

## OF OBLIGATIONS WITH RELATION TO PERSONS.

### TITLE XIII. OF PURELY JOINT OBLIGATIONS.

**724** [690]. An obligation in which there is more than one creditor or more than one debtor, and the object of which is a single prestation, is a joint obligation, which may or may not be solidary.

**725** [691]. In purely joint obligations, the credit or the debt is divided into as many equal parts as there are creditors or debtors, if the instrument constituting the obligation has not established unequal parts among the persons interested. The parts of the various creditors or debtors are considered as constituting the same number of credits or debts distinct from each other.

**726** [692]. The instrument constituting the obligation may provide that the division of the credit or of the debt be not in equal parts, but in proportion to the interest which each of them has in the association or community to which the credit or debt refers.

**727** [693]. If the object of a purely joint obligation is a divisible thing, each of the debtors is liable solely for his part of the debt, and each of the creditors may demand solely his share of the credit. A debtor who pays the debt in full, is not subrogated to the rights of the creditors against the other debtors.

**728** [694]. The insolvency of one of the debtors must be borne by the creditor, and not by the other debtors.

**729** [695]. Acts emanating from one of the creditors only, or directed against one of the debtors only, which interrupt prescription, do not benefit the other creditors, and cannot be set up against the other debtors.

**730** [696]. The suspension of prescription in favor of one of the creditors only, does not benefit the others, and, *vice*

*versa*, when the prescription is suspended with regard to one of the debtors only, the suspension cannot be set up against the others.

**731** [697]. Delay or fault on the part of one of the debtors has no effect as to the others.

**732** [698]. When a purely joint obligation contains a penal clause, the penalty is incurred only by the debtor violating the obligation, and only as to such debtor's share in the obligation.

#### TITLE XIV. OF SOLIDARY OBLIGATIONS.

**733** [699]. A joint obligation is solidary, when the entire object thereof may, under the instrument constituting it or under a provision of law, be demanded by any one of the creditors, or of any one of the debtors.

**734** [700]. The solidarity may also be established by testament, by a judicial decision having the force of *res judicata*, or it may result from the law with respect to the debtors.

**735** [701]. In order for an obligation to be solidary, it is necessary that the solidarity be expressed therein in unequivocal terms, either by the debtors binding themselves *in solido*, or each one for the entirety, or one for the others, etc., or that the law have expressly declared it to be solidary.

**736** [702]. The obligation does not cease to be solidary when, one and the same thing being owed, it is with respect to one of the creditors, or one of the debtors, a pure and simple obligation, and as to the others a conditional or a limited obligation, or one payable in some other place.

**737** [703]. Even when one of the creditors is incapable of acquiring the right or contracting the obligation, it shall not cease to be solidary as to the others. The incapacity can be set up only by the incapable creditor or debtor.

**738** [704]. A solidary obligation loses its character as such only when the creditor expressly waives the solidarity, and consents to the division of the debt among each of the debtors. But if he waives the solidarity in favor of one or

more of the debtors only, the obligation shall continue to be solidary as to the others, with the deduction of the share corresponding to the debtor who has been released from the solidarity.

**739 [705].** The creditor, or each creditor, or the creditors jointly, may demand the payment of the whole debt of all the solidary debtors jointly, or of any one of them. They may demand the share corresponding to a single debtor. If they demand the whole debt of one of the debtors, and he is found to be insolvent, they may demand it of the others. If they have demanded a part only, or have otherwise agreed to the division, with respect to one debtor, they may make claim for the entire debt upon the others, deducting the share of the debtor who has been released from the solidarity.

**740 [706].** The debtor may pay the debt to any one of the creditors, if he has not been previously sued by one of them, and the obligation is discharged as to all of them. But if any of the creditors has sued him, the payment must be made to such creditor.

**741 [707].** The novation, compensation, confusion or remission of the debt, made by any of the creditors, and with any of the debtors, extinguishes the obligation.

**742 [708].** When a creditor has collected all or part of the debt, or has compounded or remitted it, he is liable to the other creditors for the share which would be due them, if the credit were divided among them.

**743 [709].** When the thing which was the object of the obligation has perished without the fault of the debtor, the obligation is extinguished as to all of the solidary creditors.

**744 [710].** When the thing has perished owing to the act or fault of one of the debtors, or when such debtor is in default, the other co-debtors are obliged to pay the equivalent of the thing.

**745 [711].** An action to recover damages in the case of the preceding article may be brought by any of the creditors, in the same manner as an action for the performance of the principal obligation.

**746** [712]. If any of the creditors or debtors dies, leaving more than one heir, none of the coheirs is entitled to demand or receive, or is obliged to pay more than his respective share in the credit or debt, according to his hereditary portion.

**747** [713]. Any act which interrupts prescription in favor of one of the creditors or against one of the debtors, benefits or prejudices the rest.

**748** [714]. An action to recover interest brought against one of the solidary debtors, causes interest to run against all of them.

**749** [715]. Each of the co-debtors may set up against the action of the creditor all the defenses common to all the co-debtors. He may also set up such as may be personal to him, but not those personal to the other debtors.

**750** [716]. An obligation contracted *in solidum* with respect to the creditors, is divided among the debtors, who are not bound *inter se* beyond their share and portion.

**751** [717]. The relations *inter se* of the solidary co-debtors and creditors who have paid the whole debt, or who have received it, shall be determined as provided in Art. 723 [689]. When any of the debtors is insolvent, the loss shall be apportioned among all the solvent debtors and the debtor who made the payment.

## TITLE XV. OF THE ACKNOWLEDGMENT OF OBLIGATIONS.

**752** [718]. The acknowledgment of an obligation is the declaration whereby a person acknowledges that he is subject to an obligation with respect to another person.

**753** [719]. The act of the acknowledgment of obligations is subject to all the conditions and formalities of juridical acts.

**754** [720]. The acknowledgment may be made by acts *inter vivos* or by testamentary dispositions, by public instruments or by private instruments, and may be express or implied.

**755 [721].** An implied acknowledgment results from payments made by the debtor.

**756 [722].** The act of acknowledgment must contain the cause of the principal obligation, the amount thereof, and the date when it was contracted.

**757 [723].** If the act of the acknowledgment increases the original prestation, or modifies it to the prejudice of the debtor, the original instrument merely must be observed, in the absence of a new and legal cause of debt.

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## PART SECOND. EXTINCTION OF OBLIGATIONS.

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### TITLE XVI. OF PAYMENT.

**758 [724].** Obligations are extinguished:

By payment.

By novation.

By compensation.<sup>(11)</sup>

By transaction.<sup>12</sup>

By confusion.

By renunciation of the rights of the creditors.

By remission of the debt.

By inability to make payment.

**759 [725].** Payment is the performance of the prestation which constitutes the object of the obligation, whether an obligation to do something or an obligation to give something is involved.

<sup>11</sup> Compensation resembles in many respects the common-law set-off. The principal difference is that a set-off must be pleaded to be effectual; whereas compensation is effectual, without any such plea. (Bouvier, Law Dict.)

<sup>12</sup> This term is the equivalent of the common-law compromise. As stated in the introductory note, civil law terms have been strictly adhered to in this translation. *Transacción* has been uniformly translated by the term *transaction*. The term *compromise* in the civil law, has a very different meaning from the compromise of the common law. In the civil law, it is "an agreement between two or more persons, who, wishing to settle their disputes, refer the matter in controversy to arbitrators, who are so called because those who choose them give them full powers to arbitrate and decide what shall appear just and reasonable, to put an end to the differences of which they are made the judges." 1 Domat, Lois Civ., liv. 1, t. 14, cited in Bouvier, Law Dict.

**760 [726].** Payment may be made by all debtors not in a state to be considered incapacitated persons, and by all persons who have some interest in the performance of the obligation.

**761 [727].** Payment may also be made by a third party with the consent of the debtor and even without his knowledge, and the obligation is thereby extinguished with all the accessory obligations and guaranties. In either case, the person who made the payment may demand of the debtor the value of what he has given in payment. If he made the payment before the maturity of the debt, he is not entitled to reimbursement until after the date of the maturity.

**762 [728].** Payment may also be made by a third person against the will of the debtor. The person doing so has a right to recover from the debtor only the amount whereby the payment has benefited him.

**763 [729].** The creditor is obliged to accept the payment made by a third person, whether he makes the payment in his own name or in the name of the debtor; but he is not obliged to subrogate to his place the person making the payment.

**764 [730].** When the obligation is one to do something, the creditor is not obliged to receive payment by the prestation of the act or service by a third person, if he is interested in having it performed by the debtor himself.

**765 [731].** Payment must be made:

1. To the person in whose favor the obligation has been constituted, if he has not assigned the credit, or to his legal representative, when he has authorized him to receive the payment, or when the creditor does not have the free administration of his property.

2. To any one of the creditors, when the obligation is indivisible or solidary, if the debtor has not been sued by one of them.

3. To each of the co-creditors, according to the share corresponding to each, when the obligation is divisible, and not solidary.

4. When the creditor or co-creditor has died, to his legal successors under a universal title, or to his heirs, according to the share due each, if the obligation is not indivisible.

5. To the assignees or persons subrogated, whether by law or agreement.

6. To the person presenting the instrument of the credit, if it consists of bills payable to the bearer, except in a case of theft or grave suspicion that the instrument does not belong to the bearer.

7. To the third person indicated as the person to whom payment may be made, even though the creditor object, and even though a part of the debt has been paid the latter.

**766 [732].** A payment made to the person in possession of the credit is valid, even though the possessor be subsequently defeated in an action involving the ownership of the debt.

**767 [733].** A payment made to a third person who does not have the power to receive it, is valid in so far as it has been applied to the benefit of the creditor, and as to the entire payment, if the creditor ratifies it.

**768 [734].** Payment cannot be made to a person who is deprived of the administration of his property. It is valid only in so far as it has been applied to his benefit.

**769 [735].** If a creditor who is capable of contracting the obligation has rendered himself incapable to receive the payment, the debtor making the payment to him with a knowledge of the incapacity which has arisen, does not discharge the obligation.

**770 [736].** When the debt is pledged or judicially attached, the payment made to the creditor is not valid. In such case the nullity of the payment benefits only the execution creditors or plaintiffs, or the persons to whom the pledge was given, whom the debtor shall be obliged to pay again, without his right to recover from the creditor whom he has paid being affected thereby.

**771 [737].** A payment made by an insolvent debtor in fraud of other creditors is void.

**772 [738].** When the ownership of a thing is to be transferred by the payment, it is necessary in order for it to be valid, that the person who makes it be the owner thereof and have the capacity to alienate it. When the payment consists of a sum of money or of some other thing which is consumed by use, an action to recover it cannot be brought against a creditor who has consumed it in good faith.

**773 [739].** The provisions relating to persons who cannot make payments, apply to persons who cannot receive them.

## CHAPTER I.

### Of What is to be Given in Payment.

**774 [740].** The debtor must deliver to the creditor the same thing which he bound himself to deliver. The creditor cannot be compelled to receive one thing in place of another, even though it be of the same or of a higher value.

**775 [741].** When the obligation is one to do a thing, the creditor cannot be compelled to receive in payment the performance of an act other than that which is the object of the obligation.

**776 [742].** When the instrument constituting the obligation does not authorize partial payments, the debtor cannot compel the creditor to accept the partial performance of the obligation.

**777 [743].** When the debt is in part liquidated, and in part unliquidated, it may be demanded by the creditor, and the debtor must make payment of the liquidated portion, even before payment of the unliquidated portion can be made.

**778 [744].** When a sum of money is due with interest, payment shall not be considered to have been made in full unless the full amount of interest is paid with the principal.

**779 [745].** When the payment consists of the delivery of specific things, or of uncertain things, or of things which are fungible or not fungible, the provisions contained in the title *Of Obligations to Give* shall be observed.



**780 [746].** When the payment is to be made in partial prestations and at stated periods, the payment made for the last period raises a presumption of the payment of the previous installments, in the absence of proof to the contrary.

## **CHAPTER II.**

### **Of the Place Where Payment is to be Made.**

**781 [747].** Payment must be made in the place designated in the obligation. When no place has been designated, and a certain and determinate thing is involved, it must be made where said thing was at the time the obligation was contracted. In any other case, the place of payment shall be the domicile of the debtor at the time of the performance of the obligation.

**782 [748].** If the debtor changes his domicile, in cases in which such domicile is the place designated for payment, the creditor may demand it, either at the place of the original domicile, or at that of the new domicile of the debtor.

**783 [749].** If the payment consists of a sum of money, as the price of the thing sold by the creditor, it must be made at the place of the tradition of the thing, in the absence of a designated place, unless the payment is made in installments.

## **CHAPTER III.**

### **Of the Time when Payment is to be Made.**

**784 [750].** Payment must be made on the date of the maturity of the obligation.

**785 [751].** When no time for the payment has been designated, the provisions of Art. 652 [618] shall be observed.

**786 [752].** When by the instrument constituting the obligation the debtor is authorized to make the payment when he becomes able to do so or has the means therefor, the provisions of Art. 654 [620] shall be observed.

**787 [753].** The creditor may demand payment before maturity, if the debtor has made himself insolvent, and insolvency proceedings are had. If the debt is solidary, it shall not be demandable against the solidary co-debtors, who have not provoked the insolvency proceedings.

**788 [754].** The creditor may also demand payment before maturity when the property mortgaged or given in pledge is also subject to a mortgage or pledge in favor of another creditor, and when under the claim of the latter the sale thereof takes place in the execution of judgments which have become *res judicata*.

**789 [755].** If the debtor desires to make payments in advance and the creditor is willing to receive them, the latter cannot be compelled to make any discounts.

## CHAPTER IV.

### Of Payment by Consignment.

**790 [756].** A payment is made by consignment when the sum owed is deposited in court.

**791 [757].** Consignment may take place:

1. When the creditor is not willing to receive the payment tendered by the debtor.
2. When the creditor is incapable of receiving the payment at the time the debtor desires to make it.
3. When the creditor is absent.
4. When the right of the creditor to receive the payment is doubtful, and other persons appear and make demand therefor of the debtor, or when the creditor is unknown.
5. When the debt is attached or retained in the possession of the debtor, and the latter desires to relieve himself of the deposit.
6. When the instrument of the debt has been lost.
7. When the debtor of the price of immovable property purchased by him desires to redeem the mortgages which encumber it.

**792 [758].** Consignment does not have the force of payment unless all the requisites as to persons, object, mode, and time, without which payment would not be valid, are present. In the absence of these requisites, the creditor is not compelled to accept the tender of payment.

**793 [759].** A consignment made by a deposit in court, not contested by the creditor, produces all the effects of actual payment. If contested on the ground that all essential conditions are not attendant, it produces the effects of payment from the date of the judgment which declares it legal.

**794 [760].** When the creditor does not contest the consignment, or when his opposition is overruled, the expenses of the deposit and the judicial costs shall be borne by him. They shall be borne by the debtor, if he withdraws the deposit, or if the consignment is held to be illegal.

**795 [761].** The debtor may withdraw the amount consigned at any time before the creditor accepts the consignment, or before a judicial declaration of its validity has been made. The obligation in such case revives with all its accessories.

**796 [762].** When a decision has been rendered declaring the consignment valid, the debtor cannot withdraw it, not even with the consent of the creditor, to the prejudice of his co-debtors or sureties.

**797 [763].** If the consignment has been declared valid and the creditor agrees to allow the debtor to withdraw it, he cannot enforce the guaranties or securities which he had in order to recover his credit; and the co-debtors and sureties are discharged.

### **Debts of Specific Objects.**

**798 [764].** When the debt is one involving a specific object which is to be delivered at the place where it may be, the debtor must cause a judicial intimation to be served on the creditor who is to receive it; and from that time the intimation produces all the effects of a consignment. If the creditor refuses to receive it, the thing owed may be deposited elsewhere with judicial authorization.

**799 [765].** When the thing is in a place other than that where it is to be delivered, the transportation thereof to the place where it is to be delivered is to be made by the debtor, who shall then serve the intimation to receive it upon the creditor.

### **Debts of Indeterminate Things at the Election of the Creditor.**

**800 [766].** When the thing owed is an indeterminate thing and subject to the election of the creditor, the debtor must cause judicial intimation to be served on him to make the election. If he refuses to do so, the debtor may be authorized by the judge to make it. After the election has been made, the debtor must cause the intimation to be served on the creditor to receive it, as in the case of the debt of a specific object.

## **CHAPTER V.**

### **Of Payment with Subrogation.**

**801 [767].** Payment with subrogation takes place, when it is made by a third person, to whom all the rights of the creditor are transmitted. Subrogation is conventional or legal. Conventional subrogation may be assented to, either by the creditor, without the intervention of the debtor, or by the debtor, without the concurrence of the will of the creditor.

**802 [768].** Subrogation takes place independently of an express assignment of the creditor in favor:

1. Of one who being a creditor pays another creditor who outranks him.
2. Of one who pays a debt to the person who was bound with others or for others.

3. Of an uninterested third person who makes the payment, either with the implied or express consent of the debtor, or without his knowledge.

4. Of a person who has acquired an immovable, and pays the creditor who holds a mortgage on said immovable.

5. Of an heir who has accepted an inheritance with the benefit of inventory, and pays the debt against it with his own funds.

**803 [769].** Conventional subrogation takes place when the creditor receives payment from a third person and expressly transfers to him all his rights with respect to the debt. In such case the subrogation is governed by the provisions regarding *the assignment of rights*.

**804 [770].** Conventional subrogation may also be made by the debtor, when he pays the debt of a sum of money, with another sum which he has borrowed, and subrogates the lender to the rights and actions of the original creditor.

**805 [771].** Legal or conventional subrogation transfers to the new creditor all the rights, actions and guaranties of the original creditor, both against the principal debtor and co-debtors, and against the sureties, with the following modifications:

1. The person subrogated cannot exercise the rights and actions of the creditor, beyond the amount of the sum which he has actually disbursed in discharging the debtor.

2. The effect of conventional subrogation may be limited to certain rights and actions by the creditor, or by the debtor who admits it.

3. The legal subrogation, established for the benefit of those who have paid a debt to the payment of which they were bound with others, does not authorize them to exercise the rights and actions of the creditor against their co-obligors, beyond the amount of the share which each of the latter was bound to contribute to the payment of the debt.

**806 [772].** If the person subrogated to the creditor has made a partial payment, and the property of the debtor is

not sufficient to pay the remaining interest of the creditor and that of the person subrogated, both of the latter participate with equal right as to the part due them.

## CHAPTER VI.

### Of Application of Payment.

**807** [773]. If the object of a number of obligations in favor of a single creditor consists of things of the same nature, the debtor has the right to state at the time of making payment, to which one thereof it is to be applied.

**808** [774]. The debtor cannot select an unliquidated debt, nor one which has not matured.

**809** [775]. When the debtor has not selected one of the liquidated and matured debts for the application of the payment, and has accepted a receipt from the creditor, applying the payment to one of them specifically, he cannot demand that it be applied on the account of another, unless the creditor shall have made use of *dolus*, violence, or deception.

**810** [776]. When the debtor owes a sum of money with interest, he cannot, without the consent of the creditor, apply the payment to the principal.

**811** [777]. A payment made on account of principal and interest shall be applied first to the interest, unless the creditor has given a receipt on account of the principal.

**812** [778]. When the receipt of the creditor does not state to what debt the payment has been applied, it must be applied, among those which are matured, to that most burdensome to the debtor, either owing to the fact that it bears interest, or that a penalty has been stipulated for non-performance of the obligation, or that the debt is secured by a mortgage or pledge, or for some other similar reason. If the debts are of the same nature, it shall be applied to all of them *pro rata*.

## CHAPTER VII.

### Of Payment by the Delivery of Property.

**813 [779].** Payment is made when the creditor voluntarily receives in payment of the debt, some thing which is not money in lieu of that which should have been delivered to him, or in lieu of the act which was to have been performed in his favor.

**814 [780].** When the thing received by the creditor is a credit in favor of the debtor, it shall be governed by the rules relating to the *assignment of rights*.

**815 [781].** When the price for which the creditor receives the thing in payment is determined, his relations with the debtor shall be governed by the rules relating to the contract of *purchase and sale*.

**816 [782].** The representatives of the creditor, whether necessary or voluntary, are not authorized to accept payments by the delivery of property.

**817 [783].** If the creditor is defeated in an action involving the ownership of the thing given in payment, he is entitled to indemnity as a purchaser, but he cannot revive the original obligation.

## CHAPTER VIII.

### Of Things Given in Payment of what is not due.

**818 [784].** A person who through an error of fact or of law, considers himself a debtor, and delivers a thing or amount in payment, is entitled to demand the return thereof from the person who received it.

**819 [785].** The right to demand the return terminates when the creditor has destroyed the document which constituted his title as a consequence of the payment; but the right of action of the person who made the payment against the real debtor is not affected.

**820 [786].** A person who received the payment in good faith is obliged to return an amount equal to that received, or the thing delivered to him, with the pendent fruits, but not the consumed fruits. He must be considered as a possessor in good faith.

**821 [787].** If the person who in good faith received real property in payment has alienated it either under an onerous or under a lucrative title, the person who made the payment may recover it from the person in whose hands it may be.

**822 [788].** If there has been bad faith on the part of the person who received the payment, he must return the amount or the thing with interest or the fruits which it has or could have produced since the day of the payment. He must be considered as a possessor in bad faith.

**823 [789].** If the thing has deteriorated or been destroyed, even though through a fortuitous event, the person who received it in payment in bad faith, must repair the deterioration or pay its value, unless the deterioration or loss thereof would also have occurred had it been in the possession of the person who delivered it.

**824 [790].** A material error is also present, giving rise to repetition,<sup>13</sup> even in the case of an actual debtor, in the following cases:

1. When the obligation is conditional, and the debtor makes payment before the performance of the condition.

2. When the obligation is to give a specific thing, and the debtor pays the creditor, by delivering to him one thing in lieu of another.

3. When the obligation is to give an uncertain thing, and only determined by its species, or when the obligation is alternative and the debtor makes payment in the supposition that he is subject to an obligation to give a specific thing, or by delivering to the creditor all of the things included in an alternative obligation.

<sup>13</sup> *Repetition* is "the act by which a person demands and seeks to recover what he has paid by mistake or delivered on a condition which has not been performed. Dig. 12, 4, 5." Bouvier, Law Dict.



4. When the obligation is an alternative one with the debtor having the right of election, and he makes payment in the supposition that the creditor had the right of election.

5. When the obligation is one to do or refrain from doing a thing, and the debtor makes payment by performing one act instead of another, or by refraining from performing one act instead of another.

6. When the obligation is a divisible, or a purely joint obligation, and the debtor pays it in full as if it were a solidary obligation.

**825 [791].** No material error is present, nor can what has been paid be recovered, in the following cases:

1. When the obligation is a limited one and the debtor makes payment before maturity.

2. When a debt which had already prescribed is paid.

3. When payment has been made of a debt the instrument of which was void, or voidable on account of lack of formalities, or a defect in form.

4. When a debt is paid which had not been recognized in court on account of lack of proof.

5. When a debt is paid for the recovery of which the creditor is not entitled to bring an action, according to this Code.

6. When the debt of another has been paid with full knowledge.

**826 [792].** A payment made without a cause, or for a cause contrary to morality, as well as one obtained by illegal means, may be recovered, whether made through error or not.

**827 [793].** A payment must be considered as made without a cause, when it has taken place in consideration of a future cause, the realization of which was opposed by a legal obstacle, or which actually did not occur, or when made in consideration of an existing cause which has ceased to exist.

**828 [794].** A payment made by virtue of an obligation the cause of which is contrary to the laws or to public policy, is also made without a cause; unless made in the fulfillment

of an agreement, under which each of the parties was to obtain an unlawful advantage, in which case demand for its return cannot be made.

**829** [795]. A payment made for a cause contrary to good morals may be recovered if there is immorality only on the part of the person receiving it, even though the act or omission by virtue of which the payment was made, has been fulfilled. If there is immorality on both sides, demand for repayment does not lie, even though the act has not been performed.

**830** [796]. The provisions of this chapter apply to putative obligations, even though the payment has not been made; and thus, a person who through error constituted himself the creditor of another who also through error constituted himself the debtor, is obliged to return the respective instrument of credit, and give him a discharge by another instrument of the same nature.

**831** [797]. A person who through error accepted a discharge from his creditor, who also gave it to him through error, is obliged to recognize him again as his creditor for the same debt, with the same guaranties and by an instrument of the same nature.

**832** [798]. Notwithstanding the discharge given in error, the real creditor has the right to bring an action against his debtor, according to the provisions of the preceding article, if the debt is not yet due, and the judgment rendered in his favor shall serve as a new instrument of credit. If the debt is past due, he may demand its payment.

## CHAPTER IX.

### Of Payment with the Benefit of Competency.

**833** [799]. The benefit of competency is that which is granted certain debtors, in order that they shall not be obliged to pay more than they well can, leaving them, consequently, what may be indispensable for a modest subsistence, according

to their standing and circumstances, and with a charge of restitution when their fortune improves.

**834 [800].** A creditor is obliged to grant this benefit:

1. To his descendants or ascendants, if they have not committed an offense, against the creditor, of those included among the causes of disinheritance.

2. To his spouse, if not divorced through his fault.

3. To his brothers and sisters, provided they have not committed an offense against the creditor as grave as those designated as causes for disinheritance with regard to descendants and ascendants.

4. To his co-partners in the same case; but only in reciprocal actions arising out of the contract of co-partnership.

5. To the donor, but only in so far as it is sought to make him perform the donation promised.

6. To a debtor in good faith who has surrendered his property to his creditors, and who is being proceeded against as to the property subsequently acquired by him, for the full payment of a debt prior to the surrender; but this benefit is due him only from the creditors in whose favor the surrender was made.

## TITLE XVII. OF NOVATION.

**835 [801].** Novation is the transformation of one obligation into another.

**836 [802].** Novation presupposes a previous obligation which serves as a cause therefor. If the previous obligation is void, or was extinguished on the date the later obligation was contracted, there is no novation.

**837 [803].** Novation extinguishes the principal obligation with its accessories, and the accessory obligations. The creditor may, nevertheless, by an express reservation, prevent the extinguishment of the privileges and mortgages belonging to the old credit, which then pass to the new. This reservation does not require the intervention of the person with respect to whom it is made.

**838 [804].** The creditor cannot reserve the right of pledge or mortgage of the extinguished obligation, if the property mortgaged or pledged belongs to third persons who have not had any part in the novation.

**839 [805].** Novation in obligations may be made only by persons who are able to pay and have the capacity to enter into contracts.

**840 [806].** The representative of the creditor cannot make novation of the obligation if he does not hold a special power of attorney therefor.

**841 [807].** When a pure obligation is converted into a conditional obligation, there is no novation if the condition stipulated in the latter is lacking, and the original obligation shall remain in force.

**842 [808].** Nor does novation take place, if a conditional obligation is converted into a pure obligation, and the condition of the first obligation is lacking.

**843 [809].** Novation between one of the solidary creditors and the debtor discharges the obligation of the latter as to all the other creditors.

**844 [810].** Novation between the creditor and one of the debtors on account of solidary or indivisible obligations, extinguishes the obligation of the other co-debtors.

**845 [811].** Novation between the creditor and the sureties, extinguishes the obligation of the principal debtor.

**846 [812].** Novation is not presumed. It is necessary that the intention of the parties be clearly stated in the new agreement, or that the existence of the prior obligation be incompatible with the new one. The stipulations and changes in the original obligation which do not affect the principal object thereof, or its cause, such as those regarding the time, place or manner of fulfillment, are considered as modifying the obligation only, but not as extinguishing it.

**847 [813].** If a creditor who holds a special guaranty or privilege as security for his credit accepts from his debtor signed notes in payment of his debt, there is no novation of the first obligation, if the cause of the debt is the same in both obligations.

**848 [814].** The delegation <sup>14</sup> whereby a debtor gives another person who obligates himself to the creditor, does not produce novation if the creditor has not expressly declared his intention of discharging the original debtor.

**849 [815].** The novation may be made by another debtor substituting the original debtor, without the knowledge of the latter, if the creditor expressly declares that he discharges the previous debtor, and provided the second debtor does not acquire legal subrogation in the credit.

**850 [816].** The insolvency of the debtor substituted does not entitle the creditor to demand the debt of the first debtor, unless the debtor substituted is already incapable of entering into contracts by reason of his failure.

**851 [817].** Novation by substitution of the creditor takes place only when the contract between the previous creditor and the one substituting him has been made with the consent of the debtor. If the contract has been entered into without the consent of the debtor, there is no novation, but an assignment of rights.

### TITLE XVIII. OF COMPENSATION.<sup>15</sup>

**852 [818].** The compensation of obligations takes place when two persons in their own right combine reciprocally the condition of creditor and debtor, whatever be the causes of either debt. It extinguishes both debts with the force of payment, to the extent of the amount of the smaller debt, from the time both began to co-exist.

**853 [819].** In order for compensation to take place, it is necessary that the thing owed by one of the parties can be given in payment of what is owed by the other; that both debts be civilly in force; that they be liquidated; both of

<sup>14</sup> *Delegation* is defined by Bouvier as a kind of novation by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor or to the person appointed by him. (Vol. 1, p. 532.)

<sup>15</sup> See note to Art. 758 [724].

them demandable; that they are matured, and if conditional, that the conditions have been fulfilled.

**854 [820]** In order for compensation to take place, it is essential that both debts consist of sums of money, or of prestations of things which are fungible *inter se*, of the same species and of the same quality, or of uncertain things which are not fungible, determined by their species only, provided the selection belongs respectively to the two debtors.

**855 [821].** When both debts are not payable at the same place, compensation can only be set up by defraying the cost of payment at the place where it is to be made.

**856 [822].** In order for compensation to take place it is necessary that the credits and the debts be unencumbered; without a third person having vested rights, whereunder he can make lawful opposition thereto.

**857 [823].** The debts and credits between private individuals and the State cannot be compensated in the following cases:

1. When the origin of the debts of the individuals are sales of State property, or of fiscal revenues, or direct or indirect taxes, or balances of other payments to be made to the customs, such as wharfage, storage, etc.

2. When the debts and credits are not of the same department or branch of the service.

3. When the credits of the individuals are comprised in the consolidation of the credits against the State, provided for by law.

**858 [824].** An obligation to pay damages on account of the inability of returning a thing of which the legal owner or possessor has been deprived, or of returning an irregular deposit cannot be the subject of compensation.

**859 [825].** Debts on account of support, or obligations to perform some act, cannot be set off.

**860 [826].** The credits against the assignor or party delegating of a date subsequent to the notification of the assignment, or to the accepted delegation, cannot be offset between the debtor assigned or delegated and the assignee or person delegated.

**861 [827].** If instruments payable to order are involved, the debtor cannot set up compensation against the endorser, of what prior endorsers owe him.

**862 [828].** The debtor or creditor of a bankrupt can set up compensation only as to the debts which existed before the legal date of the failure, and were demandable and liquidated at that time; but not as to the debts contracted, or which became demandable and liquidated after the legal time of the bankruptcy. The debtor of the bankrupt in the latter case, must pay what he owes to the estate, and include his claim in the general liabilities of the bankrupt.

**863 [829].** A surety not only may offset the obligation against him, arising out of the bond, against what the creditor owes him, but he may also invoke and prove what the creditor owes the principal debtor, in order to bring about the compensation or payment of the obligation. But the principal debtor cannot set up the debt owing by the creditor to the surety in compensation of his own obligation.

**864 [830].** A solidary debtor may set up his own credit, or that of another of the solidary co-debtors, in compensation of the claim of the creditor.

**865 [831].** In order to set up compensation, it is not necessary that the credit to which it refers be held to have been acknowledged. If the compensation is not admitted, the debtor may set up any defenses which he may have.

## TITLE XIX. OF TRANSACTIONS.<sup>16</sup>

**866 [832].** A transaction is a bilateral juridical act, whereby the parties, by making mutual concessions to each other, extinguish litigious or doubtful obligations.

**867 [833].** All provisions regarding contracts with respect to the capacity to contract, the object, mode, form, proof and nullity of contracts, are applicable to transactions, with the exceptions and modifications contained in this title.

<sup>16</sup> See note to Art. 758 [724].

**868 [834].** The different clauses of a transaction are indivisible, and any of them which is null, or is annulled, avoids the entire act of the transaction.

**869 [835].** Transactions must be interpreted strictly. They settle only the differences regarding which the contracting parties really had the intention of compromising, whether such intention appears explicitly from the terms they have employed, or whether it is recognized as a necessary consequence of what is expressed.

**870 [836].** No rights are transferred by a transaction, but the rights which are the subject of the differences which it is sought to settle by the transaction, are declared or acknowledged. The declaration or acknowledgment of such rights does not bind the person making it to guarantee them, nor does it impose any liability whatsoever upon him in case of eviction, nor does it constitute a proper title upon which to base prescription.

**871 [837].** The validity of transactions is not subject to the observance of external formalities; but the proofs thereof are subject to the rules governing the proof of contracts.

**872 [838].** If the transaction involves rights already in litigation, it cannot be entered into in a valid manner unless it is presented to the judge of the cause, signed by the persons interested. The transaction shall not be considered closed, and the persons interested may withdraw therefrom, at any time before the parties appear before the judge and submit the transaction they have agreed on, or before they present the instrument containing it.

## CHAPTER I.

### Of the Persons who may Transact.

**873 [839].** A transaction can be entered into on behalf of another person only with a special power of attorney from him, setting forth the rights and obligations which are to be the subject of the transaction, or when the power of attorney



grants express authority for all acts which the constituent himself could perform, including that of transacting.

**874** [840]. A person who cannot dispose of the objects which are relinquished in whole or in part cannot enter into a transaction.

**875** [841]. The following cannot enter into transactions:

1. The agents of the government attorney (*Ministerio Público*), both national and provincial, and the solicitors (*procuradores*) of the municipalities.

2. Collectors or fiscal employees of any class as to anything pertaining to the public revenues.

3. The representatives or agents of juristic persons, as to the rights and obligations of such persons, if not legally authorized to enter into the transaction.

4. Executors, as to the rights and obligations of the testamentary estate, without authorization from the judge of competent jurisdiction, after a hearing of the persons interested.

5. Tutors with the wards who become emancipated, as to the accounts of the tutorship, even though authorized to do so by the judge.

6. Tutors and curators as to the rights of the minors and incapacitated persons, if not authorized therefor by the judge, after hearing the Department of Minors.

7. Emancipated minors.

## CHAPTER II.

### Of the Object of Transactions.

**876** [842]. A civil action to recover indemnity for damages sustained by reason of a criminal act, may be made the subject of transactions; but not the right of action to accuse and demand the punishment of crimes, whether by the aggrieved party, or the government attorney.

**877** [843]. A transaction cannot be entered into upon questions relating to the validity or nullity of a marriage, unless the transaction is in favor of the marriage.

**878** [844]. Things which are out of commerce,<sup>17</sup> and rights which are not susceptible of being the subject-matter of an agreement, cannot be the object of transactions.

**879** [845]. No transactions can be entered into as to contests relating to the paternal power, or the authority of the husband, or the family status itself, or the right to claim the status which corresponds to persons, whether by natural filiation, or legitimate filiation.

**880** [846]. A transaction is permitted upon purely pecuniary interests which are subordinated to the status of a person, even though such status is contested, provided the transaction does not involve at the same time the status of such person.

**881** [847]. If the transaction involves at the same time both the pecuniary interests and the status of the person, it shall be void, whether a single price or a single thing has been given, or a certain price or a different thing for the renunciation of the status, and for the relinquishment of the pecuniary rights.

**882** [848]. No transactions can be entered into involving eventual rights to a succession, nor involving the succession of a living person.

**883** [849]. In all other cases transactions may be entered into as to rights of all classes, whatever be their kind and nature, and even when they are subject to a condition.

### CHAPTER III.

#### Effects of Transactions.

**884** [850]. A transaction extinguishes the rights and obligations which the parties have relinquished, and has as to such parties the force of *res judicata*.

<sup>17</sup> "Another division of property made by some of the writers is into things in commerce, or capable of being the subject of individual ownership and transfer, and things out of commerce." Howe, *Studies in the Civil Law*, p. 78.

**885 [851].** A transaction made by one of the interested parties neither prejudices nor benefits a third person, nor the other persons interested, even when the obligations are indivisible.

**886 [852].** A transaction between the creditor and the debtor extinguishes the obligation of the surety, even though the latter has already been adjudged to make payment by a judgment having the force of *res judicata*.

**887 [853].** A transaction entered into with one of a number of solidary debtors benefits the others, but cannot be set up against them; and *vice versa*, a transaction concluded with one of a number of solidary creditors may be invoked by the others, but cannot be set up against them except as to their share in the credit.

**888 [854].** The eviction of the thing relinquished by one of the parties to the transaction, or transferred to the other who believed himself entitled thereto, does not invalidate the transaction, nor is it a ground for the restitution of whatever may have been received therefor.

**889 [855].** The party who has transferred to the other in the transaction a thing as his own, is obliged, if the holder thereof should be defeated in court, to give indemnity for damages; but the eviction which takes place shall not revive the obligation which has been extinguished by virtue of the transaction.

**890 [856].** When one of the parties to the transaction acquires a new right in the thing relinquished or transferred to the other who believed himself entitled thereto, the transaction shall not prevent the exercise of the newly acquired right.

## CHAPTER IV.

### Nullity of Transactions.

**891 [857].** Transactions entered into through error, dolus, fear, violence or the falsity of documents, are null, or may

be annulled in the cases in which contracts having such vices can be annulled.

**892 [858].** A transaction may be rescinded when the object thereof was a void instrument, or the determination of the effects of rights which had no other origin than the void instrument whereby they had been constituted, whether the parties were aware or not of the nullity of the instrument, or assumed it to be valid under an error of fact or an error of law. In such case the transaction can be maintained only if the nullity of the instrument was expressly taken into consideration.

**893 [859].** A transaction may be rescinded upon the discovery of documents unknown at the time it was made, if it appears therefrom that one of the parties did not have any right in the litigious object.

**894 [860].** A transaction involving an action already decided by a judgment having the force of *res judicata*, may also be rescinded, if the party demanding the rescission of the transaction had not been aware of the judgment which had terminated the proceedings. If any appeal lies from the judgment, the transaction cannot be annulled on the ground of such judgment.

**895 [861].** A transaction relating to an account in litigation cannot be rescinded on account of the discovery of arithmetical errors therein. The parties may bring an action for its correction when there is an error in the amount given, or when a specific part of a sum has been given in which there was an arithmetical error of calculation.

## TITLE XX. OF CONFUSION.

**896 [862].** Confusion takes place when the qualities of creditor and debtor are united in the same person, either by universal succession or any other cause; or when a third person is the heir of both the creditor and the debtor. In either case, the confusion extinguishes the debt with all its accessories.

**897 [863].** Confusion does not take place, even though the qualities of creditor and debtor are united in the same person by virtue of inheritance, if the latter has been accepted with the benefit of inventory.

**898 [864].** Confusion may take place either with respect to the entire debt, or with respect to a part thereof only. When the creditor is not the sole heir of the debtor, or the debtor is not the sole heir of the creditor, or when a third person is not the sole heir of the creditor and debtor, confusion takes place in proportion to the respective hereditary portion.

**899 [865].** The confusion of the right of the creditor with the obligation of the debtor, extinguishes the accessory obligation of the surety; but the confusion of the right of the creditor with the obligation of the surety does not extinguish the obligation of the principal debtor.

**900 [866].** The confusion between one of a number of solidary creditors and the debtor, or between one of a number of solidary co-debtors and the creditor, extinguishes only the obligation corresponding to such debtor or creditor, and not the shares belonging to the other co-creditors or co-debtors.

**901 [867].** When the confusion ends by reason of a subsequent event which re-establishes the separation of the qualities of creditor and debtor united in the same person, the parties interested shall be restored to the rights temporarily extinguished, and to all the accessories of the obligation.

## **TITLE XXI. OF THE WAIVER OF THE RIGHTS OF THE CREDITOR.**

**902 [868].** Any person capable of giving or receiving under a gratuitous title, may make or accept the gratuitous waiver of an obligation, The waiver having been made and accepted, the obligation is extinguished.

**903 [869].** When the waiver is made in consideration of a price or any prestation whatsoever, the capacity of the person making it and that of the person in whose favor it is made,

are determined according to the rules governing contracts under an onerous title.

**904** [870]. A waiver made in dispositions of last will is a legacy, and shall be governed by the laws relating to legacies.

**905** [871]. If a waiver under an onerous contract relates to litigious or doubtful rights, the rules governing transactions shall be applicable thereto.

**906** [872]. Persons capable of making a waiver may waive all rights established in their particular interest, even though eventual or conditional; but not rights granted, less in the particular interest of persons, than in the interest of public policy, which are not susceptible of being the subject of waiver.

**907** [873]. The waiver is not subject to any external formality. It may take place even impliedly, excepting the cases in which the law requires that it be manifested in an express manner.

**908** [874]. The intention to make a waiver is not presumed, and the interpretation of acts tending to prove it must be restrictive.

**909** [875]. A waiver may be retracted before its acceptance by the person in whose favor it is made, without prejudice to the rights acquired by third persons, as a consequence of the waiver, between the time it took place and the time it was retracted.

## **TITLE XXII. OF THE REMISSION OF DEBTS.**

**910** [876]. The provisions contained in the first four articles of the preceding title are applicable to the remission of a debt by a creditor.

**911** [877]. There is a remission of a debt when the creditor voluntarily delivers to the debtor the original document which is evidence thereof, if the debtor does not claim that he has paid it.

**912** [878]. Whenever the original document which is evidence of the debt is in the possession of the debtor, the

presumption is that the creditor delivered it to him voluntarily, without prejudice to the right of the latter to prove the contrary.

**913 [879].** When the document which is evidence of the debt is a document which is protocolized, and the debtor holds an authenticated copy thereof which does not bear a memorandum of the payment or remission of the credit, and the original also fails to show a memorandum of the payment or remission signed by the creditor, the burden of proof that the creditor delivered it to him in remission of the debt is on the debtor.

**914 [880].** A remission in favor of the principal debtor discharges the sureties; but that made to the surety does not benefit the debtor.

**915 [881].** The remission to the debtor produces the same juridical effects as payment does with respect to his heirs, and to solidary co-debtors.

**916 [882].** The remission made to one of the sureties does not benefit the other sureties beyond the extent of the share which corresponded to the surety who obtained the remission.

**917 [883].** If the surety paid the creditor a part of the obligation in order to obtain his discharge, such payment must be applied to the debt; but if the creditor remitted the debt subsequently, the surety cannot recover the part paid by him.

**918 [884].** A remission by delivery of the original document, in relation to the sureties, solidary co-creditors or solidary debtors, produces the same effects as an express remission.

**919 [885].** No special form is required for making an express remission, even when the debt is evidenced by a public document.

**920 [886].** The voluntary return by the creditor of a thing received as a pledge, carries with it only the remission of the right of pledge, but not the remission of the debt.

**921 [887].** The existence of the pledge in the hands of the debtor raises a presumption of a voluntary return, without prejudice to the right of the creditor to prove the contrary.

## TITLE XXIII. OF IMPOSSIBILITY OF PAYMENT.

**922 [888].** An obligation is extinguished when the prestation which constitutes the subject thereof becomes physically or legally impossible without the fault of the debtor.

**923 [889].** If the prestation becomes impossible through the fault of the debtor, or if the latter has assumed the liability for fortuitous events or *force majeure*, whether by virtue of a clause charging him with the risks which may arise thereunder, or by reason of having incurred delay, the original obligation, whether it be one to give or to do something, is converted into an obligation to pay damages.

**924 [890].** When the prestation consists of the delivery of a certain thing, the obligation is extinguished by the loss thereof, and is converted into one to pay damages only in the cases of Art. 923 [889].

**925 [891].** The thing which was to have been given shall be considered as lost only when it has been totally destroyed, or taken out of commerce,<sup>18</sup> or has disappeared in such a manner as to make its existence unknown.

**926 [892].** When a debtor is liable for fortuitous events only when he incurs delay, he is relieved from the payment of damages, if the thing which he is unable to deliver as a consequence of a fortuitous event would have been similarly lost if it had been in the possession of the creditor.

**927 [893].** When the object of the obligation is the delivery of a thing which is not certain, determined among a number of certain things of the same species, it is extinguished if all the things comprised therein are lost as a consequence of a fortuitous event or *force majeure*.

**928 [894].** When the obligation consists of the delivery of uncertain things which are not fungible, determined only by their species, the payment shall never be considered as impossible, and the obligation shall always be converted into an indemnity for damages.<sup>19</sup>

<sup>18</sup>See note to Art. 878 [844].

<sup>19</sup>*Pérdidas é intereses*: see Art. 1103 [1089].



**929 [895].** In cases in which the obligation is extinguished on account of impossibility to make payment, it is extinguished not only as to the debtor, but also as to the creditor to whom the debtor must return whatever he received by reason of the extinguished obligation.

**SECTION II. OF ACTS AND JURIDICAL ACTS  
WHICH GIVE RISE TO THE ACQUISITION,  
TRANSFER OR EXTINGUISHMENT OF  
RIGHTS AND OBLIGATIONS.**

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**TITLE I. OF ACTS.**

**930 [896].** The acts of which this part of the Code treats are all those events susceptible of producing an acquisition, modification, transfer or extinguishment of rights or obligations.

**931 [897].** Human acts are voluntary or involuntary. Acts are considered voluntary if executed understandingly, intentionally and freely.

**932 [898].** Voluntary acts are lawful or unlawful. Lawful acts are voluntary actions not prohibited by law, from which some acquisition, modification or extinguishment of rights can result.

**933 [899].** When the immediate object of the lawful acts is some acquisition, modification or extinguishment of rights, they shall produce such effect only in the cases in which they are expressly declared.

**934 [900].** Acts performed not understandingly, intentionally and freely, do not produce any obligation whatsoever *per se*.

**935 [901].** The consequences of an act which usually occurs, in the natural and ordinary course of events, are called in this Code *immediate consequences*. The consequences resulting solely from the connection of an act with a different event, are called *mediate consequences*. Mediate consequences which cannot be foreseen are called *incidental consequences*.

**936 [902].** The greater the duty of acting with prudence and a full knowledge of matters, the greater is the obligation resulting from the possible consequences of acts.

**937** [903]. The immediate consequences of free acts are imputable to the author thereof.

**938** [904]. The mediate consequences are also imputable to the author of the act when he has foreseen them, and when, if he had employed the proper attention and knowledge of the thing, he could have foreseen them.

**939** [905]. Purely incidental consequences are not imputable to the author of the act, unless they necessarily had to occur, according to his purpose in performing the act.

**940** [906]. The incidental consequences of acts which are reprobated by the laws are imputable, when the casualty of the consequences was prejudicial by reason of the act.

**941** [907]. When damage is caused to the person or property of another by involuntary acts, the corresponding indemnity lies only if the author of the act has enriched himself by the damage, and to the amount whereby he has enriched himself.

**942** [908]. Nevertheless, the rights of the aggrieved parties to enforce the liability of those who have under their charge persons who act without the proper understanding, are not affected.

**943** [909]. In weighing voluntary acts, the laws do not take into consideration the special condition, or the intellectual faculty of a certain person, except in contracts which presuppose special confidence between the parties. In such cases the degree of responsibility shall be measured by the special condition of the agents.

**944** [910]. No one can compel another to do a thing, or restrict his liberty, without a special right to do so having been constituted.

**945** [911]. No one can compel another to refrain from performing an act on the ground that such act might be prejudicial to the person performing it, except when a person is acting in violation of a duty prescribed by the laws, and the intervention of the public authorities cannot take place in time.

**946** [912]. A person who has the right under the law or a commission from the State to direct the actions of another, may employ force to prevent him from injuring himself.

**947** [913]. No act shall partake of a voluntary character, without an overt act whereby the will is manifested.

**948** [914]. Overt acts manifesting the will may consist of the execution of a material act which has been consummated or begun, or simply of a positive or implied expression of the will.

**949** [915]. The declaration of the will may be formal or informal, positive or implied, or induced by a presumption of law.

**950** [916]. Formal declarations are those the value of which depends on the observance of the formalities exclusively admitted as an expression of will.

**951** [917]. A positive expression of the will is so considered when manifested verbally, or in writing, or by other unequivocal signs, with reference to specific objects.

**952** [918]. An implied expression of the will arises from those acts whereby the existence of the will can be ascertained with certainty, in cases in which a positive expression is not required, or when there is no protest or express declaration to the contrary.

**953** [919]. Silence as to acts, or to an inquiry, is not considered as a manifestation of the will, as agreeing to the act or as replying to the inquiry in the affirmative, except in cases in which an obligation to explain oneself is imposed by the law or by the relations of family, or by reason of a relation between the present silence and previous statements.

**954** [920]. An expression of the will may likewise result from the presumption of the law in the cases in which it expressly so provides.

**955** [921]. Acts shall be considered acts done without understanding, if they are lawful acts performed by imbecil minors, or unlawful acts by minors under ten years of age; as also the acts of insane persons not performed during lucid intervals, and those of persons who are deprived of the use of their reason, by any accident whatsoever.

**956** [922]. Acts are considered to have been performed unintentionally, if performed through ignorance or error, under force or intimidation.

## CHAPTER I.

### Of Acts Produced by Ignorance or Error.

**957** [923]. Ignorance of the laws, or an error of law, shall in no case prevent the legal effects of lawful acts, nor excuse responsibility for unlawful acts.

**958** [924]. An error as to the nature of a juridical act annuls everything contained therein.

**959** [925]. An error as to the person with whom the relation of law is established is also a material error, and annuls the juridical acts.

**960** [926]. An error as to the principal cause of the act, or as to the quality of the thing had in view, vitiates the expression of the will, and avoids what has been provided in the act.

**961** [927]. An error as to the object involved in the act, as when a thing has been contracted for, individually different from that regarding which it was desired to contract, or a thing of a different species, or a different amount, measure or sum, or a different act, also annuls the act.

**962** [928]. An error as to some accidental quality of the thing, or as to some accessory thereof, does not invalidate the act, even though it had been the determining motive therefor, unless the quality erroneously attributed to the thing had been expressly guaranteed by the other party, or that the error had been caused by *dolus* on the part of such party or of a third person, provided it be established by the attendant circumstances that without the error the act would not have been executed, or when the quality of the thing, the thing accessory thereto, or any other circumstances have the express character of a condition.

**963** [929]. An error of fact does not prejudice the act, when there was cause for the error, but it cannot be pleaded when the ignorance of the real state of things is due to culpable negligence.

**964** [930]. In unlawful acts, ignorance or an error of fact excludes the liability of the parties only if it relates to the principal fact which constitutes the unlawful act.

## CHAPTER II.

### Of Acts Produced by Dolus.

**965** [931]. Any false assertion, or dissimulation of the truth, any artifice, cunning, or machination employed to obtain the performance of an act, is a dolous action.

**966** [932]. In order for *dolus* to be the means of invalidating an act, the attendance of all of the following circumstances is necessary:

1. It must have been grave.
2. It must have been the determining cause of the action.
3. It must have occasioned important damage.
4. Dolus must not have been employed by both parties.

**967** [933]. A dolous omission produces the same effects as a dolous action, if the act would not have been performed without the dolous reticence or concealment.

**968** [934]. Incidental *dolus* does not affect the validity of the act, but the person who employed it must give indemnity for any damage caused by him. Incidental *dolus* is that which was not the actual cause of the act.

**969** [935]. *Dolus* affects the validity of acts *inter vivos* whether employed by one of the parties or a third person. If committed by a third person, the provisions of Articles 975 [941], 976 [942] and 977 [943] shall govern.

## CHAPTER III.

### Of Acts Produced by Force and Fear.

**970** [936]. There is want of liberty in the parties when an irresistible force is employed against them.

**971** [937]. There is intimidation when there is inspired by means of unjust threats in one of the parties, a well founded fear of suffering an imminent and grave injury to his person,

liberty, honor or property, or to his spouse, descendants or ascendants, either legitimate or illegitimate.

**972 [938].** Intimidation does not affect the validity of acts except when by reason of the condition of the person, his character, habits, or sex, it can be judged that it must have made a strong impression upon him.

**973 [939].** There is no intimidation on account of unjust threats when the person who makes them confines himself to the enforcement of his own rights.

**974 [940].** Reverential fear, or that in which descendants stand of their ascendants, that in which the wife stands of her husband, or subordinates of their superiors, is not a sufficient cause for the annulment of acts.

**975 [941].** Force or intimidation make the act voidable, even though employed by a third person who does not take part therein.

**976 [942].** If the force employed by a third person is known to one of the parties, the third person and the party aware of the force imposed are solidarily liable for all damages to the person the subject thereof.

**977 [943].** If the force employed by a third person was not known to the party prejudiced by the annulment of the act, the third person shall be the only one liable for all damages.

## **TITLE II. OF JURIDICAL ACTS.**

**978 [944].** Juridical acts are voluntary lawful acts, the immediate purpose of which is to establish between persons juridical relations, to create, modify, transfer, preserve or extinguish rights.

**979 [945].** Juridical acts are positive or negative, according to whether the performance or omission of an act is necessary in order for a right to begin or end.

**980 [946].** Juridical acts are unilateral or bilateral. They are unilateral, when the will of a single person is sufficient to form them, as by a testament. They are bilateral, when they require the unanimous consent of two or more persons.

**981 [947].** Juridical acts, the force of which is not dependent upon the death of the persons from whose will they emanate, such as contracts, are called in this Code *acts inter vivos*. When they are not to produce any effect until after the death of the persons from whose will they emanate, such as testaments, they are called *dispositions of last will*.

**982 [948].** The validity or nullity of juridical acts *inter vivos* or of dispositions of last will, with respect to the capacity or incapacity of the parties, shall be governed by the laws of their respective domicile (Arts. 6 and 7).

**983 [949].** Legal capacity or incapacity, the object of the act and the material vices it may contain, shall be governed as to their validity or nullity by the laws of this Code.

**984 [950].** With regard to the forms and formalities of juridical acts, their validity or nullity shall be governed by the laws and usages of the place where the acts were executed. (Art. 12.)

**985 [951].** The existence of acts *inter vivos* begins the day they were entered into, and if dependent for their validity on an instrumental form or any other form exclusively prescribed, from the date of the respective instruments.

**986 [952].** The existence of dispositions of last will begins the day of the death of the respective disposing parties, or on the date the law presumes that their death occurred (Art. 117).

**987 [953].** The objects of juridical acts must be things which are in commerce,<sup>20</sup> or things which it has not been forbidden for some special reason to make the object of a juridical act, or acts which are not impossible, unlawful, contrary to good morals, or prohibited by the laws, or opposed to liberty of action or of conscience, or prejudicial to the rights of a third person. Juridical acts which do not conform to this provision are as void as if they had no object.

**988 [954].** Any act executed with the defects of error, *dolus*, simulation or fraud (*fraude*), is void.

<sup>20</sup>See Art. 878 [844].



## CHAPTER I.

### Of Simulation in Juridical Acts.

**989** [955]. Simulation is present when the juridical character of an act is concealed under the appearance of another act, or when the act contains clauses which are not sincere, or dates which are not true, or when rights are constituted or transferred thereby to interposed persons, other than those for whom they are really constituted or to whom they are transferred.

**990** [956]. The simulation is absolute when a juridical act is celebrated which is not real in any respect, and relative, when employed in order to give to a juridical act an appearance which conceals its real character.

**991** [957]. The simulation is not reproved by the law when it prejudices no one and is not employed for an unlawful purpose.

**992** [958]. When in a relative simulation a grave act is discovered which is concealed under false appearances, such act cannot be annulled, if it does not violate the law, nor prejudice a third person.

**993** [959]. None of the persons who have simulated an act for the purpose of violating the laws or of injuring a third person, can bring any action against the other, based on such simulation.

**994** [960]. When there is a counter instrument regarding the simulation signed by either of the parties, the purpose of which is to avoid the simulated act, whether the simulated act was unlawful, or whether it was lawful, explaining or restricting the previous act, the judges may take cognizance of both the counter instrument and the simulation, if the counter instrument does not contain anything opposed to the prohibition of the laws, or against the rights of a third person.

## CHAPTER II.

### Of Fraud in Juridical Acts.

**995** [961]. Any chirograph<sup>21</sup> creditor may bring an action for the avoidance of acts celebrated by the debtor to the damage or in fraud of his rights.

**996** [962]. In order to bring this action it is essential:

1. That the debtor be in a state of insolvency. This state is presumed when he has failed.

2. That the damage of the creditors be a result of the act of the debtor itself, or that he was already insolvent before the act.

3. That the credit upon which the action is brought be of a date prior to the act of the debtor.

**997** [963]. The alienations made by a person who has committed a crime, even though consummated before the crime, when made in order to evade liability for the act, are excepted from the third condition of the preceding article, and may be set aside by the persons who are entitled to indemnity for the damages caused them by the crime.

**998** [964]. If the debtor has not renounced by his act vested rights, but has waived powers, by the exercise of which he might have been able to improve the state of his fortune, the creditors may cause his acts to be set aside, and avail themselves of the powers waived.

**999** [965]. The acts of the debtor shall be set aside only in the interest of the creditors who may have demanded their revocation, and to the extent of their credits.

**1000** [966]. The third person to whom the property of the debtor has been transferred may stop the action of the creditors, by paying the credits of those who have brought it, or by giving sufficient security for the payment of their credits

<sup>21</sup> A creditor who proves his credit by a private instrument, that is, by a due-bill (*vale*), promissory note, etc.

in full, if the property of the debtor should be insufficient to cover them.

**1001 [967].** When the act of the insolvent debtor which prejudices the creditors is under a gratuitous title, it may be set aside at their request, even though the person to whom his property has passed was unaware of the insolvency of the debtor.

**1002 [968].** When the action of the creditors is directed against an act of the debtor under an onerous title, it is essential, in order to permit the act to be set aside, that the debtor shall have sought by such means to defraud his creditors, and that the third person with whom he entered into the contract shall have been a party to the fraud.

**1003 [969].** The intention of the debtor to defraud his creditors by acts prejudicial to them, is presumed by his state of insolvency. The complicity of the third person in the fraud of the debtor is also presumed if at the moment of treating with him he was aware of his insolvent state.

**1004 [970].** When the person in whose favor the debtor has executed an act prejudicial to his creditors has transferred to another the rights acquired from him, the action of the creditors is admissible only when the transfer of rights was made under a gratuitous title. If made under an onerous title, it is admissible only when the party acquiring the same had been a party to the fraud.

**1005 [971].** Upon the revocation of the fraudulent act of the debtor, if there has been any alienation of property, such property must be returned by the grantee thereof, if a party to the fraud, with all its fruits, as a possessor in bad faith.

**1006 [972].** A person who has acquired in bad faith the things alienated in fraud of creditors, must indemnify the latter for damages, when the thing has passed to a grantee in good faith, or when it has been lost.

**CHAPTER III.****Of the Forms of Juridical Acts.**

**1007** [973]. Form is the aggregate of the provisions of the law, respecting the formalities to be observed at the time of the execution of the juridical act; such are: the deed of the act, the presence of witnesses, the drawing up of the act by a notary public, or by a public official, or with the intervention of the local judge.

**1008** [974]. When the form for a juridical act is not prescribed by this Code, or by special laws, the persons interested may employ any forms which they deem proper.

**1009** [975]. In cases in which the expression in writing is prescribed or agreed to the exclusion of any other form, it cannot be supplied by any other evidence, even though the parties have bound themselves to reduce it to writing within a certain time, and some penalty has been imposed; the act and the stipulation as to the penalty are void.

**1010** [976]. In cases in which the form of a public instrument is prescribed to the exclusion of any other, the lack thereof cannot be supplied by any other evidence, and the act shall also be void.

**1011** [977]. When a certain class of public instrument has been prescribed to the exclusion of any other, the lack of an instrument of such class cannot be supplied by one of a different class.

**1012** [978]. An expression in writing may be reduced either to a public instrument, or to a private instrument, excepting the cases in which the form of a public instrument is prescribed to the exclusion of any other.

**TITLE III. OF PUBLIC INSTRUMENTS.**

**1013** [979]. The following are public instruments with regard to juridical acts:

1. Public deeds (*escrituras*) entered by notaries in the books of their protocol, or by other officials having similar powers, and copies from these books made in the form prescribed by law.

2. Any other instrument (*instrumento*) drawn up by notaries public and public officials in the form prescribed by the laws.

3. Entries in the books of brokers, in the cases and form stated in the Code of Commerce.

4. Records of judicial proceedings, made of record by the respective court clerks and signed by the parties, in the cases and in the forms determined by the laws of procedure; and the copies of such records made by order of the judge before whom they were had.

5. Drafts accepted by the government or its delegates, notes or any other instruments of credit issued by the public treasury, accounts taken from the fiscal books, authenticated by the person charged with the keeping thereof.

6. Drafts of private individuals, given in payment of customs duties bearing a statement or the proper memorandum that they belong to the public treasury.

7. Bonds of the public debt, both national and provincial.

8. The stock of specially authorized companies, issued in accordance with their by-laws.

9. The notes, passbooks, and all certificates issued by banks, authorized to make such issues.

10. Records of marriages in the parochial books, or in the municipal registries, and the copies taken from such books or registries.

**1014** [980]. For the validity of an act, as a public instrument, it is necessary that the public official act within the limits of his powers, with respect to the nature of the act, and that it be drawn within the territory assigned him for the discharge of his functions.

**1015** [981]. Instruments are nevertheless valid when drawn by officials without the district assigned to them, if the place is generally considered as included within their district.

**1016** [982]. The absence in the person of the public official of the qualifications or conditions necessary for appointment to the office held by him, does not deprive his acts of the character of public instruments.

**1017** [983]. The acts authorized by a public official who has been suspended, removed, or superseded, after being notified of the suspension, removal or supersedure, are void; but the acts prior to notification of the cessation of his functions, are valid.

**1018** [984]. An act under private signature, ordered protocolized among public instruments by a judge of competent jurisdiction, is a public instrument from the date on which the judge ordered the protocolization.

**1019** [985]. Acts authenticated by a public official which involve a matter in which he or his relatives within the fourth degree are personally interested, are void; but if the persons interested are so only to the extent of having an interest in joint stock companies, or as managers or directors thereof, the act is valid.

**1020** [986]. It is essential to the validity of the act that the formalities prescribed by the laws have been fulfilled, under the penalty of nullity.

**1021** [987]. An act emanating from a public official, even though incompetent, or lacking the proper formalities, is valid as a private instrument, if signed by the parties, even though it lack the conditions and formalities required for acts under private signature.

**1022** [988]. A public instrument requires as an essential to its validity that it be signed by all the persons interested who appear as parties therein. If one or more of the solidary or merely joint co-interested parties do not sign it, the act is void as to all those who have signed it.

**1023** [989]. Public instruments are voidable when any of the parties whose signatures are appended thereto charge their falsity in whole or in a material portion, or when they contain corrections, interlineations, erasures or changes in material portions, such as in the date, names, amounts, things, etc., of which a memorandum does not appear at the foot.

**1024** [990]. Unemancipated minors, insane persons, the blind, persons who have no domicile or residence in the place, women, persons who do not know how to sign their names, the employees of the public official, and the employees of other offices authorized to draw up public instruments, the relatives of the public official within the fourth degree, bankrupt merchants who have not obtained their discharge, members of religious communities and persons who are incompetent to be witnesses to public instruments by virtue of a sentence, cannot be witnesses to public instruments.

**1025** [991]. A common error as to the competency of incompetent witnesses who have been witnesses to a public instrument, but who were generally considered competent, saves the nullity of the act.

**1026** [992]. The witnesses to an instrument and the public official who drew it up cannot contradict, vary nor alter the contents thereof, unless they plead that they witnessed the act on account of the use of *dolus* or violence against them, in which case the public instrument shall be void.

**1027** [993]. A public instrument is full proof until its falsity is charged in a civil or criminal action, as to the material existence of the acts which the public official has declared to have been performed by him personally, or to have taken place in his presence.

→ **1028** [994]. Public instruments are full proof, not only between the parties, but also against third persons, as to the fact of the act having been executed, and as to the agreements, dispositions, payments, acknowledgments, etc., set forth therein.

**1029** [995]. Public instruments are full proof of the statements of fact or juridical acts directly bearing upon the juridical act which constitutes the principal object, not only between the parties, but also with respect to third persons.

**1030** [996]. The contents of a public instrument may be modified or invalidated by a public or private counter instrument executed by the interested parties; but a private counter instrument does not have any effect against successors





Amendment of articles 1032, 1035, and 1037 of the Civil Code, promulgated October 11, 1913, by Law No. 9151.

Art. 1. Amending articles 1032, 1035, and 1037 of the Civil Code as follows:

**1032.** Public records must be recorded in books of registration which will be numbered, signed or sealed, according to the laws in force. Records which are not in registers will be of no effect.

**1035.** All the public records must set forth the nature of the instrument, its object, the names and surnames of the persons signing, whether they are of age, their station in life, their residence or neighborhood, the place, day, month and year when the instrument is signed, which may be done upon any day whether Sunday, a holiday or religious festival. The Notary must certify that he knows the party signing, and when the entry is completed, he must read it to the parties, noting at the end corrections, interlinations and erasures. (The remainder of the article is not amended.)

**1037.** The following is substituted for the last paragraph of the article: If the instruments are signed and recorded in the register of the Notary or have already been transcribed into the register, it will be sufficient that he certify that they will be found in his register, indicating the folio where they will be found, and it will be sufficient for him to transcribe only the part relating to the same.

Art. 2. Published by Authority.

under a singular title, nor does a public counter deed, if the contents thereof are not noted on the original instrument, and on the copy on which the third party acted.

#### TITLE IV. OF PUBLIC DEEDS.

**1031** [997]. Public deeds (*escrituras públicas*) may be drafted only by notaries public or other officials authorized to exercise the same functions.

**1032** [998]. Public deeds must be drafted by the notary himself in a register which shall be numbered, rubricated or stamped according to the laws in force. Deeds drafted by notaries public which are not in the protocol have no value whatsoever.

**1033** [999]. Deeds must be drafted in the national language. If the parties do not speak it, the deed must be drafted in exact conformity with a rough draft signed by the parties themselves in the presence of the notary, who shall certify to the act, and to the acknowledgment of the signatures, if the parties did not sign it in his presence, after its translation by the public translator, and if there is no such translator, by one appointed by the judge. The rough draft and its translation must be protocolized.

**1034** [1000]. If the parties are deaf-mutes or mutes able to write, the deed must be drafted in conformity with the rough draft submitted by the persons interested, signed by them, and the signatures acknowledged before the notary, who shall certify to such fact. This rough draft must also be protocolized.

**1035** [1001]. The public deed must set forth the nature of the act, its object, the names and surnames of the persons who execute it, whether they are of full age, their family status, their domicile or residence, the place, day, month and year they were signed, which may be done any day, even though a Sunday or holiday, or a religious feast day. The notary must certify that he is acquainted with the parties to the deed, and after concluding the deed he shall read it to

the parties, and make a note at the foot thereof of any interlineations or erasures which have been made. If any of the parties does not know how to sign, some person other than the witness to the instrument shall do so in his name. The deed thus executed with all the conditions, clauses, terms, the amounts paid over in the presence of the notary, which amounts shall be written out and not expressed in figures, must be signed by the persons interested in the presence of two witnesses, whose names shall be stated in the body of the act, and authenticated at the end by the notary.

**1036** [1002]. If the notary is unacquainted with the parties, said parties must establish their personal identity to him by two witnesses known to the notary, who shall include their names and residence in the deed, and certify to his acquaintance with them.

**1037** [1003]. If the parties are represented by attorneys-in-fact, the notary must state that the respective power of attorney was presented to him and shall transcribe it in the register together with the deed. He shall do the same if the parties make reference to some other public instrument. But if the instruments have been executed in the registry of the notary, it shall be sufficient for him to certify that they are in his protocol, indicating the folio where they are to be found.

**1038** [1004]. Deeds which do not contain a statement of the time and place where they were executed, the names of the parties thereto, the signature of the parties, the signature at their request when they do not know how or are unable to write, the procurations or powers and the presence and signature of two witnesses to the act, are void. Non-observance of the other formalities does not annul the deeds, but the notaries or public officials may be penalized for their omissions in a fine not exceeding three hundred *pesos*.

**1039** [1005]. A deed which is not to be found at the page of the protocol where it should appear, according to chronological order, is void.

**1040** [1006]. The notary must give the parties requesting it an authenticated copy of the deed which they have executed.

**1041** [1007]. The notary must issue on demand any additional copies requested on account of the loss of the first copy; but if any of the parties bound himself in the deed to give or do something, the second copy cannot be issued without express authorization from the judge.

**1042** [1008]. Before the issue of a copy, the parties to the deed must be cited, and they may compare the correctness of the copy with the matrix. If they are absent, the judge may designate a public official to be present when the copy is made.

**1043** [1009]. If there is any difference between the copy and the matrix, the contents of the latter shall prevail.

**1044** [1010]. The copy of the deeds referred to in the preceding articles constitutes proof as full as the matrix.

**1045** [1011]. If the book of the protocol is lost and any of the parties applies for the renewal of a copy which existed, or request that it be included in the register in order to serve as an original, the judge may so order after citing and hearing the persons interested, provided the copy is not erased or blotted out in a suspicious place, nor in such condition that it cannot be clearly read.

## TITLE V. OF PRIVATE INSTRUMENTS.

**1046** [1012]. The signature of the parties constitutes an essential condition to the existence of every act under private signature. Neither marks nor the initials of the names or surnames can be substituted therefor.

**1047** [1013]. When a number of copies of the private instrument have been made, it is not necessary that the signature of all of the parties appear on each one of the originals; it is sufficient that each of the latter in the possession of one of the parties bear the signature of the other.

**1048** [1014]. No person can be compelled to acknowledge an instrument signed with initials or marks only; but if the person who has so signed voluntarily acknowledges it, the initials or marks shall have the same value as the actual signature.

**1049** [1015]. Private instruments may be signed on any day, whether Sunday, a holiday, or a religious feast day.

**1050** [1016]. The signature may be given in blank before the instrument is reduced to writing. After the act has been filled in by the party to whom it was entrusted, it is admissible as evidence upon acknowledgment of the signature.

**1051** [1017]. The signer may, nevertheless, question the contents of the act and prove that the declarations or obligations therein contained, are not those which it was his intention to make or contract. Such evidence cannot be parol.

**1052** [1018]. The nullity of the declarations or obligations of the signer to the act decreed by a judge by virtue of the proof offered, do not have any effect as to the third persons who have entered into a contract in good faith with the other party on the strength of said written act.

**1053** [1019]. The provisions of the two preceding articles do not apply to a case in which the paper which contains the signature in blank was fraudulently obtained from the person to whom it had been entrusted, and filled in by a third person against the will of such person. Proof of the abstraction and of the abuse of the signature in blank may be adduced by the testimony of witnesses. Agreements with third persons by the holder of the act cannot be set up against the signer, even though the third persons have acted in good faith.

**1054** [1020]. No special form is prescribed for acts under private signature. The parties may execute them in the language and with the formalities which they may deem advisable.

**1055** [1021]. Nevertheless, as many originals of acts which contain perfectly bilateral agreements must be drafted as there are parties having a different interest.

**1056** [1022]. The application of the provisions of the preceding article may be omitted, when one of the parties, before the act is drafted, or while it is being drafted, performs in full the obligation which the act imposes upon him.

**1057** [1023]. A defect in the drafting of a number of copies of perfectly bilateral acts, does not avoid the agreements contained therein, if it be shown by other evidence that the act was concluded in a definite manner.

**1058** [1024]. The ineffectiveness of a bilateral act owing to one copy thereof only having been made, is cured by the subsequent performance, either in whole or in part, of the agreements therein contained; but if the agreement has been carried out by one of the parties only, without the other having concurred or participated in the performance thereof, the vice of the act subsists as to such party.

**1059** [1025]. The deposit of a bilateral act of which one copy only has been made, with a notary public or any other person charged with the care thereof, made by common consent of both parties, purges the act of the vice. If the deposit has been made by one of the parties only, the irregularity is not purged except as to such party.

**1060** [1026]. A private instrument judicially acknowledged by the party against whom it is set up, or one held to have been duly acknowledged, has the same force as a public instrument between the persons who have subscribed it and their successors.

**1061** [1027]. The acknowledgment of private instruments is not admissible if the signers thereof, even though capable at the time of signing the same, are not so at the time of the acknowledgment.

**1062** [1028]. The judicial acknowledgment of a signature is sufficient for the body of the instrument also to be considered as acknowledged.

**1063** [1029]. The proof arising from the acknowledgment of private instruments is indivisible and has the same force against the persons who acknowledge them as against those who present them.

**1064** [1030]. Notes written by the creditor in the margin or immediately following a private instrument which is in the possession of the debtor, if signed by the creditor, constitute proof in support of the discharge of the debtor and never to establish an additional obligation.

**1065** [1031]. Any person against whom a private instrument signed by him is set up in court, is obliged to declare whether the signature thereto is or is not his.

**1066** [1032]. The successors of the person who has apparently signed may confine themselves to a declaration that they do not know whether the signature is or is not that of their predecessor in interest.

**1067** [1033]. If the person who has apparently signed denies that it is his signature, or his successors state that they are not acquainted with it, a verification and comparison of handwriting shall be ordered. Other evidence as to the genuineness of the signature appended to the act may also be admitted.

**1068** [1034]. Private instruments, even after their acknowledgment, are not proof against third persons or against successors under a singular title, of the correctness of the date stated therein.

**1069** [1035]. Even when a private instrument has been acknowledged, its real date in relation to the singular successors of the parties, or to third persons, shall be:

1. That of its production in court or in any public distribution for any purpose, if it should remain on file there.
2. That of its acknowledgment before a notary and two witnesses who signed it.
3. That of its transcription in any public register.
4. That of the death of the party who signed it, or of the party who wrote it, or of the person who signed as a witness.

**1070** [1036]. Letters addressed to third persons shall not be admitted to acknowledgment, even though some obligation be mentioned therein.

## TITLE VI. OF THE NULLITY OF JURIDICAL ACTS.

**1071** [1037]. Courts cannot declare other causes for the annulment of juridical acts than those established in this Code.

**1072** [1038]. The nullity of an act is apparent when the law has expressly declared it void, or has made it subject to a penalty of nullity. Such acts are considered void even though their annulment has not been declared,

**1073** [1039]. The nullity of a juridical act may be absolute or merely partial. The partial nullity of a provision in the act does not prejudice other valid provisions, provided they are separable.

**1074** [1040]. A juridical act in order to be valid, must be executed by a person capable of changing the state of his right.

**1075** [1041]. Juridical acts executed by persons who are absolutely incapable on account of their dependency on necessary representation, are void.

**1076** [1042]. Juridical acts executed by persons relatively incapable as to the act, or who require authorization from the judge, or from a necessary representative, are also void.

**1077** [1043]. Acts executed by persons who are forbidden by this Code to exercise the act involved, are likewise void.

**1078** [1044]. Juridical acts are void when the parties have proceeded with simulation or fraud presumed by the law, or when the principal object of the act is prohibited, or when it does not have the form prescribed by the law to the exclusion of any other, or when the validity thereof depends on the form of the instrument, and the respective instruments are void.

**1079** [1045]. Juridical acts are voidable when the parties thereto have acted while under an accidental incapacity, as for example while they were deprived of their reason from any cause; or when their incapacity under the law was not known at the time of the signature of the act, or when the prohibition of the object of the act was not known owing to the necessity of an investigation of fact, or when the vice of error, violence, fraud, or simulation is present; and when the validity thereof depends on the form of the instrument, and the respective instruments are voidable.

**1080** [1046]. Voidable acts are considered valid as long



as they are not annulled; and they shall be considered void only from the date of the judgment whereby they are annulled.

**1081** [1047]. Absolute nullity can and must be declared by the judge, even without the petition of a party, when it is apparent in the act. It may be pleaded by all persons having an interest in so doing, except by the person who drafted the act, knowing or being required to know the defect which invalidated it. His testimony may also be demanded by the government attorney, in the interest of good morals or the law. Absolute nullity is not susceptible of ratification.

**1082** [1048]. Relative nullity cannot be declared by the judge except on the petition of a party, nor can his testimony be demanded by the government attorney in the sole interest of the law, nor can it be set up by any persons other than those for whose benefit the laws have established it.

**1083** [1049]. A capable person cannot demand the annulment nor set up the nullity of the act on the ground of the incapacity of the other party. Nor can the person who made use of the violence, intimidation or fraud, demand the annulment on the ground thereof, nor can the person who caused the error on the part of the other party demand the annulment on the ground of such error.

**1084** [1050]. The annulment decreed by judges restores things to the same state or to a state similar to that existing prior to the annulled act.

**1085** [1051]. All real or personal rights in an immovable transferred to third persons by a person who became the owner thereof under the act annulled, are invalid and may be claimed directly of their actual possessor.

**1086** [1052]. The annulment of the act obliges the parties to return to each other what they have received or collected by virtue or as a consequence of the act annulled.

**1087** [1053]. When the act is bilateral, and the correlative obligations both consist of sums of money, or of things productive of fruits, the respective restitution of interest or fruits shall lie only from the date the action for avoidance was brought. Interest and fruits collected up to said date shall be set off against each other.

**1088** [1054]. If of two objects which constitute the subject matter of a bilerateral act, only one consists of a sum of money, or of a thing productive of fruits, the restitution of interest or fruits must be made from the date the sum of money was paid, or the thing productive of fruits was delivered.

**1089** [1055]. When the object of the obligation consists of fungible things, the return of those which have been consumed in good faith does not lie.

**1090** [1056]. The acts annulled, even though they do not produce the effects of juridical acts, produce, nevertheless, the effects of unlawful acts, or of acts in general, the consequences of which must be repaired.

**1091** [1057]. In cases in which it is not possible to enforce against third persons the effects of the nullity of acts, or to maintain an action against them, a right of action to recover indemnity for all damages shall always lie.

**1092** [1058]. A relative nullity may be purged by the confirmation of the act.

## TITLE VII. OF THE CONFIRMATION OF VOID OR VOIDABLE ACTS.

**1093** [1059]. Confirmation is the juridical act whereby a person causes the vices in another act which is subject to an action for avoidance to disappear.

**1094** [1060]. Void or voidable acts cannot be confirmed by the parties who have a right to bring an action for avoidance or set up their nullity, before the termination of the incapacity or vice giving rise thereto, and provided that none other which could cause the nullity of the act of confirmation is present.

**1095** [1061]. The confirmation may be express or implied. The instrument whereby an express confirmation is made, must contain, under the penalty of nullity: 1. The substance of the act which it is sought to confirm. 2. The vice which it contained, and 3. A statement of the intention to cure it.

**1096** [1062]. The form of the instrument of confirmation must be the same and be executed with the same formalities that are established for the act confirmed, to the exclusion of any others.

**1097** [1063]. An implied confirmation is that which results from the voluntary performance, either in whole or in part, of the act subject to an action for avoidance.

**1098** [1064]. The confirmation, whether express or implied, does not require the concurrence of the party in whose favor it is made.

**1099** [1065]. The confirmation has a retroactive effect to the date upon which the act *inter vivos* took place, or to the date of the death of the testator in acts of last will. This retroactive effect does not prejudice the rights of third persons.

## TITLE VIII. OF UNLAWFUL ACTS.

**1100** [1066]. No voluntary act shall have the character of an unlawful act if not expressly prohibited by the ordinary laws, municipal laws, or police regulations; and to no unlawful act can there be applied any penalty or sanction of this Code in the absence of a provision of law which has imposed it.

**1101** [1067]. For the purposes of this Code, there is no punishable unlawful act when no damage has been caused, or any other external act which could cause it, unless the parties thereto can be charged with dolus, fault or negligence.

**1102** [1068]. There is damage whenever another person is caused an injury susceptible of pecuniary appraisal, either directly to the things belonging to him or in his possession, or indirectly on account of the damage done to his person, or to his rights or powers.

**1103** [1069]. The damage comprises not only the loss actually sustained, but also the profits of which the person damaged may have been deprived by the unlawful act, and which in this Code are designated by the words *losses and interest* (*pérdidas é intereses*).<sup>22</sup>

<sup>22</sup> This expression has been translated throughout this Code by the term "damages."

**1104** [1070]. An unlawful act performed by insane persons in lucid intervals is not considered voluntary, even though they have been declared such in judicial proceedings; nor acts performed while in a state of intoxication, unless it be proved that such intoxication was involuntary.

**1105** [1071]. The exercise of a vested right, or the performance of a legal obligation, cannot operate to make any act unlawful.

**1106** [1072]. An unlawful act performed knowingly and with the intent to damage the person or rights of another, is called in this Code an offense (*delito*).

## CHAPTER I.

### Of Offenses (*Delitos*).

**1107** [1073]. An offense may be a negative act or act of omission, or a positive act.

**1108** [1074]. Any person who causes damage to another by any omission, is liable only when a provision of the law imposes upon him the obligation of performing the act omitted.

**1109** [1075]. Any right may be the subject of an offense whether it be a right in an extrinsic object, or whether it be confounded with the existence of the person.

**1110** [1076]. In order for an act to be considered an offense it is necessary that it be the result of a free determination on the part of the author thereof. An insane person and a person under ten years of age are not liable for the damage they cause.

**1111** [1077]. Every offense carries with it the obligation of repairing the damage resulting therefrom to another person.

**1112** [1078]. If the act should constitute an offense under the criminal law, the obligation arising therefrom comprises not only indemnity for damages, but also for the moral injury which the offense may have caused the person to suffer, either by molesting him in his personal security, or in the enjoyment of his property, or wounding his legitimate affections.

**1113** [1079]. The obligation to repair the damage caused by an offense lies, not only with regard to the person directly damaged by the offense, but also with regard to any person who has suffered therefrom, even though in an indirect manner.

**1114** [1080]. The husband and the parents may demand damages for the injuries<sup>23</sup> committed against the wife and the children.

**1115** [1081]. The obligation to repair the damage caused by an offense rests solidarily upon all those who have participated therein as authors, abettors or accomplices, even though an act not punishable under the criminal law be involved.

**1116** [1082]. If one of them gives indemnity for all the damage, he shall not have the right to sue the others for their shares.

**1117** [1083]. Reparation for damages, whether material or moral, caused by an offense, must take the form of a pecuniary indemnity to be fixed by the judge, unless the restitution of the object which has been the subject matter of the offense should be made.

## CHAPTER II.

### Of Offenses against Persons.

**1118** [1084]. When the offense consists of a homicide, the delinquent is under the obligation of paying all the expenses incurred in the attendance of the deceased and in his funeral; also, whatever may be necessary for the maintenance of the widow and children of the deceased, the amount of the indemnity and the form of the payment thereof being left to the discretion of the judges.

**1119** [1085]. The right to demand the indemnity provided for in the first part of the preceding article, is vested in any one who has defrayed the expenses therein referred to. The indemnity referred to in the second part of the article can

<sup>23</sup> See note to sub. 5, Art. 224 [67].

be demanded only by the surviving spouse, and by the necessary heirs of the deceased, if they are not declared guilty of the offense as authors or accomplices, or if they did not prevent it, being able to do so.

**1120** [1086]. When the offense consists of wounds or physical injuries, the indemnity shall consist of the payment of all the expenses of the medical attendance and convalescence of the aggrieved party, and of all the earnings he has ceased to receive to the date of his complete recovery.

**1121** [1087]. When the offense is against individual liberty, the indemnity shall consist only of a sum corresponding to the total earnings which the victim has ceased to receive to the date upon which he was restored to full liberty.

**1122** [1088]. If the offense should consist of rape or abduction, the indemnity shall consist in the payment of a sum of money to the woman aggrieved, if she has not contracted marriage with the delinquent. This provision applies also when the offense consists of carnal copulation with the use of violence or threats against any chaste woman, or the seduction of a chaste woman under eighteen years of age.

**1123** [1089]. When the offense consists of calumny or injury <sup>24</sup> of any kind, the aggrieved party is entitled to demand a pecuniary indemnity only, if he proves that the calumny or injury caused him some actual damage or a cessation of earning power appraisable in money, provided the delinquent fails to prove the truth of the charge.

**1124** [1090]. When the offense consists of a calumnious accusation, the delinquent, in addition to the indemnity of the preceding article, shall pay the aggrieved party all that he has expended in his defense, and all the earnings which he ceased to receive by reason of the calumnious accusation, without prejudice to the fines or penalties established by the criminal law both with regard to the offense of this article, and with regard to the other offenses contained in this chapter.

<sup>24</sup> See note to sub. 5, Art. 224 [67] for definition of injury.

### CHAPTER III.

#### Of Offenses against Property.

**1125** [1091]. When the offense consists of theft, the thing stolen shall be returned to the owner with all its accessories, and with indemnity for all the deterioration it has suffered, even though caused by a fortuitous event or *force majeure*.

**1126** [1092]. When the restitution of the thing stolen is not possible, the provisions of this chapter relating to indemnity for damages on account of the total destruction of a thing belonging to another shall apply.

**1127** [1093]. When the offense consists of the conversion of money, the delinquent shall pay interest at the current rate from the date of the offence.

**1128** [1094]. When the offense consists of damages due to the destruction of a thing belonging to another, the indemnity shall consist of payment for the thing destroyed; when the destruction of the thing is partial, the indemnity shall consist of the payment of the difference between its present value and its original value.

**1129** [1095]. The right to recover indemnity for the damage caused by offenses against property is vested in the owner of the thing, in the person having the right of possession, or the mere possession thereof, as the lessee, the bailee in commodatum, or the depositary; and in a mortgage creditor, even against the owner of the thing mortgaged himself, when the latter is the author of the damage.

### CHAPTER V.

#### Of the Exercise of Actions to Recover Damages *Ex Delicto*.

**1130** [1096]. Indemnity for damages *ex delicto* may be recovered only by a civil action independent of the criminal action.

**1131** [1097]. A civil action shall not be considered to have been renounced on account of the aggrieved persons not having brought a criminal action or having desisted therefrom during their lifetime; nor shall it be understood that they renounced the criminal action on account of having brought a civil action or having desisted therefrom. But if they renounced the civil action or made an agreement as to the payment of the damage, the criminal action shall be considered to have been renounced.

**1132** [1098]. An action to recover damages *ex delicto*, may be directed against the universal successors of the principals and accomplices, the provisions of the laws relating to the acceptance of inheritances with the benefit of inventory being nevertheless observed.

**1133** [1099]. When offenses are involved which have caused a moral damage only, such as injuries<sup>25</sup> or defamation, the civil action does not pass to the heirs and universal successors, unless it was instituted by the deceased.

**1134** [1100]. An action for damages *ex delicto*, even though the offense be one punishable under the criminal law, is extinguished by the renunciation of the persons interested; but the renunciation by the person directly injured does not bar the exercise of the right of action which may vest in the spouse or his or her parents.

**1135** [1101]. When the criminal action has preceded the civil action or is brought while the latter is pending, no judgment shall be rendered in the civil action before the conviction of the defendant in the criminal action, except in the following cases:

1. When the defendant has died before the rendition of judgment in the criminal action, in which case the civil action may be brought or continued against the respective heirs.
2. In the event of the absence of the defendant, when the criminal action cannot be brought or continued.

**1136** [1102]. After the conviction of the defendant in the criminal action, the existence of the principal act constituting the offense cannot be contested in the civil action, nor can the fault of the party convicted be impugned.

<sup>25</sup> See note to sub. 5, Art. 224 [67].



**1137 [1103].** Nor shall it be permissible after the acquittal of the defendant, to plead in a civil action the existence of the principal act as to which said defendant may have been acquitted.

**1138 [1104].** If the criminal action is subject to pre-judicial<sup>26</sup> questions, which can be decided in a civil action exclusively, no judgment shall be rendered in the criminal action before the judgment in the civil action has acquired the force of *res judicata*. Pre-judicial questions are the following only:

1. Those involving the validity or nullity of marriages.
2. Those involving the classification of the bankruptcy of merchants.

**1139 [1105].** With the exception of the two preceding cases, or of others expressly excepted, the judgment upon the act rendered in the civil action shall have no bearing in the criminal action, nor shall it bar a subsequent criminal action based upon the same act, or on another act bearing a relation thereto.

**1140 [1106].** Whatever be the subsequent judgment in the criminal action, a previous judgment rendered in the civil action which has become *res judicata*, shall continue to produce all its effects.

## TITLE IX. OF OBLIGATIONS ARISING OUT OF UNLAWFUL ACTS WHICH DO NOT CONSTITUTE OFFENSES.

**1141 [1107].** Acts or omissions in the performance of conventional obligations are not comprised in the articles of this Title, if they do not degenerate into the offenses of the penal law.

<sup>26</sup> *Pre-judicial*: Rom. Law. Of or pertaining to a judicial examination previous to a trial: applied to interrogatory actions for the determination of questions of fact or right, more particularly as regards status, generally with a view to further proceedings. (Standard Dictionary.) That which must be decided before judgement can be rendered on the main issue (Escrive).

**1142** [1108]. Articles 1104 [1070], 1105 [1071], 1107 [1073], 1108 [1074], 1109 [1075], and 1110 [1076], are applicable to unlawful acts, performed without the intention of causing damage.

**1143** [1109]. Any person performing an act, which through his fault or negligence causes damage to another, is obliged to repair the damage. This obligation is governed by the same provisions to which the offenses of the civil law are subject.

**1144** [1110]. This reparation may be demanded not only by the person who is the owner or possessor of the thing which has sustained the damage, or his heirs, but also by the usufructuary, or the usuary, if the damage causes injury to his interests.

It may also be demanded by the person who holds the thing with the obligation of answering therefor, but only in the absence of the owner.

**1145** [1111]. An act which would cause no damage to the person who sustains it, were it not owing to a fault chargeable to him, does not impose any liability whatsoever.

**1146** [1112]. Acts and omissions of public officials in the discharge of their duties, on account of a failure to observe other than in an irregular manner the legal obligations imposed upon them, are comprised in the provisions of this Title.

**1147** [1113]. The obligation of a person who has caused damage, extends to the damages caused by the persons dependent upon him, or by the things of which he makes use, or which he has under his care.

**1148** [1114]. The father, and in the event of his death, absence, or incapacity, the mother, is liable for the damages caused by their minor children under their power, and living with them, whether legitimate or natural.

**1149** [1115]. The liability of parents terminates when the child has been placed in an establishment of any kind whatever, and is in a permanent manner under the surveillance and authority of another person.

**1150** [1116]. Parents are not liable for the damages caused by the acts of their children, if they prove that it was impossible

for them to prevent such acts. This impossibility does not result from the mere circumstance of the act having occurred out of their presence, if it appear that they had not exercised active watchfulness over their children.

**1151** [1117]. The provisions regarding parents apply to tutors and curators, as to the acts of the persons under their charge. They apply likewise to the directors of colleges, master artisans, as to the damage caused by their pupils or apprentices, over ten years of age, and they are exempt from all liability if they prove that they could not prevent the damage with the authority which their capacity vested in them, and with the care which it was their duty to employ.

**1152** [1118]. The owners of hotels, public lodging houses and of public establishments of any kind whatever, are liable for the damage caused by their agents or employees to the effects of the persons who are occupants thereof, or when such effects disappear, even though they prove that it was impossible for them to prevent the damage.

**1153** [1119]. The preceding article applies to the captains and masters of vessels, as to the damage caused by members of the crew to the goods shipped, when such goods are lost:

To land transportation agents, with regard to the damage to or loss of the merchandise they receive for transportation:

To fathers of families, when tenants of a house, in whole or in part, as to the damage caused to passers-by, by things thrown into the street, or on land belonging to another, or on their own land if subject to a servitude of right of way, or by things hung or placed in such a dangerous manner, as to permit them to fall; but not when the land is their own property and not subject to a servitude of right of way. When two or more persons occupy the house, and the room whence it came is not known, all of them are liable for the damage caused. If it should be known which of them threw out the thing, he alone is liable.

**1154** [1120]. The obligations of innkeepers as to the effects brought into the inn by transients or travelers, are governed by the provisions relating to necessary deposits.

**1155** [1121]. When the hotel or public lodging house belongs to two or more owners, or when the vessel has two captains or masters, or when there are two or more fathers of families, or tenants in the house, they are not bound *in solidum* to make good the damage; but each is liable in proportion to the interest he has unless he proves that the act was caused by the fault of one of them exclusively, and in such case only the person at fault shall be liable for the damage.

**1156** [1122]. Persons sustaining damages by employees or servants, may bring an action directly in the civil courts against those civilly liable for the damage, and are not obliged to bring into court the authors of the act.

**1157** [1123]. The person who pays the damage caused by his employees or servants, may recover whatever he has paid of the employee or servant who caused it through his fault or negligence.

## CHAPTER I.

### Of Damages Caused by Animals.

**1158** [1124]. The owner of an animal, whether domestic or wild, is liable for the damage it may cause. The same liability rests on the person to whom the animal has been sent to make use of, reserving his right of action against the owner thereof.

**1159** [1125]. If the animal which caused the damage had been aroused by a third person, the latter is liable, and not the owner of the animal.

**1160** [1126]. The liability of the owner of the animal lies, even though the animal at the moment it caused the damage was under the care of the employes of said owner.

Nor is the liability of the owner discharged, because the damage caused by the animal was not due to the general habits of its species.

**1161** [1127]. If the animal which caused the damage had escaped or strayed without the fault of the person charged with its custody, the liability of the owner ceases.

**1162** [1128]. The liability of the owner terminates also if the damage caused by the animal was due to *force majeure* or to a fault chargeable to the person who sustained it.

**1163** [1129]. The damage caused by a wild animal, which is not of use in the care or service of an estate, is always chargeable to the person in whose possession it is even though it had not been possible for him to prevent the damage, and even though the animal had escaped without the fault of its keepers.

**1164** [1130]. The damage caused by one animal to another shall be made good by the owner of the attacking animal if the latter provoked the animal attacked. If the animal attacked provoked the aggressor, the owner of the former is not entitled to any indemnity whatsoever.

**1165** [1131]. The owner of an animal cannot evade the obligation of repairing the damage by offering to relinquish the ownership of the animal.

## CHAPTER II.

### Of Damages Caused by Inanimate Things.

**1166** [1132]. The owner of an estate adjoining a building which threatens to collapse, cannot demand of the owner of the latter any guaranty whatsoever on account of the eventual damage which he might sustain by its collapse. Nor can he require him to repair or cause the building to be torn down.

**1167** [1133]. When any damage is caused by an inanimate thing, the owner thereof is liable for the indemnity, if he fails to prove that there was no fault on his part, as in the following cases:

1. The collapse of buildings or constructions in general, in whole or in part.

2. The fall of trees liable to fall on account of ordinary causes.

3. Excessive smoke from a furnace, forge, etc., on neighboring houses.

4. Exhalations from pestilential sewers or deposits, due to the construction thereof without the necessary precautions.

5. Humidity in adjoining walls, on account of unavoidable causes.

6. Obstructions in rivers, for the service of one's own property.

7. New works of any kind whatsoever, even though in a public place and with permission, if they cause damage.

**1168** [1134]. Indemnity for the damage caused by the collapse of a building lies upon proof of negligence on the part of its owner, or of his representative, in making the necessary repairs, or in taking the proper precautions, even though the collapse is due to a defect in construction.

**1169** [1135]. If the construction which has collapsed was leased or given in usufruct, the party damaged shall have a right of action against the owner thereof only. If it is the undivided property of a number of co-owners, each of them shall pay the indemnity in proportion to his interest in the ownership.

**1170** [1136]. Damages may be sued for as an accessory to the denunciation of new works, whether terminated or in course of construction.

### SECTION III. OF OBLIGATIONS EX CONTRACTU.

#### TITLE I. OF CONTRACTS IN GENERAL.

**1171** [1137]. There is a contract when a number of persons come to an agreement upon a declaration of common will, designed to regulate their rights.

**1172** [1138]. Contracts are called in this Code unilateral, or bilateral. The former are those in which one of the parties only obligates himself to the other without the latter becoming obligated to him. Bilateral contracts are contracts in which the parties mutually obligate themselves to each other.

**1173** [1139]. It is also said in this Code that contracts are under an onerous title, or under a gratuitous title: they are under an onerous title when the benefits accruing therefrom to one or the other of the parties are granted to such party only on account of a prestation which he may have rendered, or which he binds himself to render the other; they are under a gratuitous title, when they assure to one or the other of the parties some advantage, independent of any prestation on his part.

**1174** [1140]. Contracts are consensual or real. Consensual contracts, without prejudice to the provision relating to the forms of contracts, are perfected as to the production of their particular effects, the moment that the parties have mutually expressed their consent.

**1175** [1141]. Real contracts, in order to produce their particular effects, are perfected when one of the parties has delivered to the other the thing which is the subject of the contract.

**1176** [1142]. The class of real contracts includes *mutuum*, *commodatum*, the contract of deposit, and the constitution of pledge and antichresis.

**1177** [1143]. Contracts are nominate or innominate, according as to whether the law designates them by a special name or not.

## CHAPTER I.

### Of Consent in Contracts.

**1178** [1144]. Consent must be manifested by offers or propositions made by one of the parties, and accepted by the other.

**1179** [1145]. Consent may be express or implied. It is express when manifested verbally, in writing, or by unequivocal signs. It is implied when it results from facts or from acts which presuppose it, or which authorize a presumption thereof, except in cases in which the law requires an express manifestation of the will; or when the parties have stipulated that their agreements shall not be binding until after compliance with certain formalities.

**1180** [1146]. Implied consent is presumed if one of the parties delivers and the other receives the thing offered or asked; or if one of the parties does what he would not have done, or does not do what he would have done if it had been his intention not to accept the proposition or offer.

**1181** [1147]. Among absent persons consent may be expressed through agents or by letter.

**1182** [1148]. In order for a promise to exist it must be made to a specified person or persons as to a special contract, with all the antecedents which constitute contracts.

**1183** [1149]. The offer is absolutely void if one of the parties dies or loses his capacity to contract: the party making the proposition, before having received notice of its acceptance, and the other party, before having accepted.

**1184** [1150]. Offers may be withdrawn at any time before their acceptance, unless the person who made them had waived the power to withdraw them, or had bound himself, at the time of making them, to abide thereby until a certain time.

**1185** [1151]. A verbal offer or proposition is not held to have been accepted if not accepted immediately; or if having been made through an agent, the latter returns without an express acceptance.



**1186** [1152]. Any modification in the offer at the time of its acceptance, implies the proposition of a new contract.

**1187** [1153]. If the offer is an alternative one, or comprises things which can be separated, the acceptance of one of them perfects the contract. If the two things cannot be separated, the acceptance of one of them alone implies the proposal of a new contract.

**1188** [1154]. Acceptance perfects a contract only from the time it was sent to the person making the proposition.

**1189** [1155]. The acceptor of the offer may withdraw his acceptance before it has become known to the party making it. If he withdraws it after it has become known to the other party, he must indemnify the latter for the damages which the withdrawal has caused him, if it is not possible to fulfill the contract otherwise, owing to the offer having already been accepted.

**1190** [1156]. A party who has accepted the offer without knowing of the withdrawal of the proposal by the party making it, or of his subsequent death or incapacity, and who as a consequence of his acceptance has incurred expense or suffered loss, is entitled to recover damages.

**1191** [1157]. The provisions of the Title *Of Acts*, of this Book, respecting defects in consent, apply to contracts.

**1192** [1158]. The right to annul contracts on account of defects in consent, is vested in the party who has suffered them, and not in the other party, nor in the author of the *dolus*, violence, simulation or fraud.

**1193** [1159]. The right to claim that a contract is void ceases if after the causes of the nullities become known or have ceased to exist the contract is confirmed expressly or impliedly.

## CHAPTER II.

### Of Persons who can Contract.

**1194** [1160]. Persons who are incapable on account of absolute incapacity, or incapable on account of relative

incapacity in cases in which they are expressly forbidden to enter into contracts, or those excluded from doing so with specified persons, or as to particular things, or persons who are forbidden to do so in the provisions relating to each contract, or persons of either sex who have taken religious vows, cannot enter into contracts, except when they purchase movables for cash, or enter into contracts for their convents; nor are bankrupt merchants permitted to enter into contracts involving property pertaining to the estate of the bankruptcy, unless they make settlements with their creditors.

**1195** [1161]. No one can enter into a contract in the name of a third person without being authorized by him, or without being qualified by law as his representative. A contract entered into in the name of another, without his authorization or legal representation, is absolutely void, and does not even bind the person who made it. The contract is valid if the third person ratifies it expressly or executes the contract.

**1196** [1162]. The ratification by the third person in whose name, or in whose interest the contract has been entered into, produces the same effect as previous authorization, and entitles him to enforce the performance of the contract.

The relations in law of the person who has contracted for him, are those of the manager of another's business (*negotiorum gestor*).

**1197** [1163]. A person who binds himself for a third person, offering that said person will perform a certain act, must pay damages, if the third person refuses to fulfill the contract.

**1198** [1164]. The right to plead the nullity of contracts entered into by incapacitated persons, is vested exclusively in the incapacitated person, his representatives or successors, the third parties interested, and in the Department of Minors, when the incapacity is absolute, and not in the party who had capacity to enter into the contract.

**1199** [1165]. The nullity of a contract having been declared, the party capable of entering into the contract has no right to demand the restitution of what he has given, or the reimbursement of what he has paid or expended, unless he

proves that what he gave exists, or that it redounded to the manifest benefit of the incapacitated person.

**1200** [1166]. If the incapacitated person has acted with *dolus* in order to induce the other party to contract, neither he nor his representatives or successors have the right to annul the contract, unless the incapacitated person is a minor, or the *dolus* consists in the concealment of the incapacity.

### CHAPTER III.

#### Of the Object of Contracts.

**1201** [1167]. The provisions relating to the objects of juridical acts and of obligations contracted, govern contracts, and prestations<sup>27</sup> which cannot be the object of juridical acts, cannot be the object of contracts.

**1202** [1168]. Any prestation may be the object of a contract, whether it consists of an obligation to do, or whether it consists of an obligation to give something; and in the latter case, whether it involves a thing which is present, or a future thing, or whether it involves the ownership, the use, or the possession of the thing.

**1203** [1169]. The prestation which is the object of a contract may consist of the delivery of a thing, or of the performance of a positive or negative act susceptible of pecuniary valuation.

**1204** [1170]. Things which are the objects of contracts must be determined as to their species, even though not so as to amount, provided the latter can be determined.

**1205** [1171]. An amount is considered as determinable when its determination is left to the decision of a third person; but if the third person does not desire, is unable, or does not determine it, the judge may make the determination in person, or through experts if necessary, in order that the agreement may be carried out.

<sup>27</sup> See note on p. 93.

**1206** [1172]. Contracts the object of which is the delivery of things which are said to exist, when they do not as yet exist, or have ceased to exist, are void; and a person who has promised such things shall pay indemnity for any damage which he causes the other party.

**1207** [1173]. When the object of contracts consists of future things, the promise to deliver them is subordinate to the fact, *if they should exist in the future*, unless the contracts are aleatory.

**1208** [1174]. Things in litigation, things given in pledge, or in antichresis, or which are mortgaged or subject to an attachment, may be the object of contracts, without prejudice to the obligation to satisfy any loss which third persons may sustain from the contract.

**1209** [1175]. A future inheritance cannot be the object of a contract, even though it be entered into with the consent of the person whose succession is involved; nor eventual hereditary rights in particular objects.

**1210** [1176]. Contracts entered into simultaneously on present property, and on property subject to a succession which has not yet been offered, are absolutely null and void, if concluded for one and the same price, unless the person in whose benefit the contract has been entered into agrees that the whole price is to apply to the present property only.

**1211** [1177]. Things belonging to another may be the object of contracts. If the person who promises to deliver things belonging to another did not guarantee that the promise would be carried out, he shall only be obliged to employ the means necessary to secure the performance of the prestation. If the thing belonging to another is not delivered through his fault, he must pay damages. He must also pay damages, if he guaranteed the promise, and the latter is not kept.

**1212** [1178]. A person who has entered into a contract involving things belonging to another as things belonging to himself, and fails to make delivery thereof, commits the crime of stellionate,<sup>28</sup> and is liable for all damages.

<sup>28</sup> *Stellionate*: In Civil Law, a name given generally to all species of frauds committed in making contracts, not specially defined. (Escriche, *Diccionario de Legislación y Jurisprudencia*.)

**1213 [1179].** A person who in bad faith enters into a contract involving things in litigation, or things which are pledged, mortgaged or attached, as if they were unencumbered, also commits the crime of stellionate, and is liable for all damages, provided the other party accepted the promise in good faith.

## CHAPTER IV.

### Of the Forms of Contracts.

**1214 [1180].** The form of contracts between persons present is governed by the laws and usages of the place where they have been entered into.

**1215 [1181].** The form of contracts between absent persons, if made by a private instrument signed by one of the parties, is governed by the laws of the place designated in the date of the instrument. If made by means of private instruments, signed in different places, or through agents, or by letter, the form thereof is governed by the laws most favorable to the validity of the contract.

**1216 [1182].** The provisions regarding the forms of juridical acts must be observed in contracts.

**1217 [1183].** Whenever an instrumental form is required, and a certain class of instrument exclusively is prescribed, the contract is not valid if made in any other form.

**1218 [1184].** The following must be reduced to a public deed, under the penalty of nullity, excepting those celebrated at public auction:

1. Contracts the object of which is the conveyance of immovable property, whether in ownership or usufruct, or some obligation or incumbrance thereon, or the transfer of real rights in the immovable property of another.

2. Extrajudicial partitions of inheritances which involve one thousand *pesos* or more, or which include immovable property, even though the value thereof be less than said amount.

3. Contracts of partnership, and the extension of the term of partnerships, when the capital of each partner exceeds one thousand *pesos*, or when some of the property contributed consists of immovables.

4. Marriage agreements and the settlement of dowries exceeding one thousand *pesos*.

5. All constitutions of life annuities.

6. The assignment, repudiation, or waiver of hereditary rights, involving an amount of one thousand *pesos* or more.

7. General or special powers of attorney to be presented in court, and powers of attorney to administer property, and any other powers the subject of which is an act embodied, or which must be embodied, in a public deed.

8. Transactions<sup>29</sup> involving immovable property.

9. The assignment of actions or rights arising out of acts embodied in a public deed.

10. All acts which are accessory to contracts embodied in a public deed.

11. The payment of obligations included in a public deed, with the exception of partial payments, interest, charges, or rental.

**1219** [1185]. Contracts which should be reduced to a public deed and appear in the form of a private instrument, signed by the parties, or of a private instrument wherein the parties agree to reduce it to a public deed, are not concluded as such until the public deed has been signed; but they are concluded as contracts whereby the parties have bound themselves to execute a public deed.

**1220** [1186]. The foregoing article does not apply if the parties declare in the private instrument that the contract is not to be valid without the public deed.

**1221** [1187]. The obligation referred to in Article 1219 [1185] shall be considered an obligation to do something, and the party who refuses to do it, may be sued by the other party to execute the public deed, under the penalty of the obligation being resolved into the payment of damages.

<sup>29</sup> See note 12, on p. 118.

**1222** [1188]. Contracts entered into verbally, when they must be reduced to a public deed or private instrument, shall also be terminated for the purpose designated in the preceding article.

**1223** [1189]. When a penal clause has been embodied in a public instrument, or earnest money has been paid at the time of the execution of the contract, the indemnity for damages shall consist of the payment of the penalty, and in the latter case in the forfeiture of the earnest money, or its return with an equal amount in addition.

## CHAPTER V.

### Of the Proof of Contracts.

**1224** [1190]. Contracts are proved in the manner prescribed by the Codes of Procedure of the Federated Provinces:

By public instruments.

By private instruments, signed or unsigned.

By the confession of the parties, in or out of court.

By judicial oath.

By legal or judicial presumptions.

By witnesses.

**1225** [1191]. Contracts which the law requires to be executed in a specified form, are not considered as proved if not in the form prescribed, unless it has been impossible to obtain the proof prescribed by the law, or unless there is written *prima facie* evidence in contracts which can be executed by private instruments, or unless the question involves the vices of error, dolus, violence, fraud, simulation, or the forgery of the instruments from which it appears, or unless one of the parties has received some prestation and refuses to fulfill the contract. In such cases the means of proof stated are admissible.

**1226** [1192]. It shall be held that it is impossible to obtain or produce written proof of the contract, in cases of necessary

deposits or when the obligation was contracted on account of unforeseen incidents, under which it may have been impossible to reduce it to writing.

Any public or private document emanating from the adversary, his predecessor in interest, or a party interested in the matter, or who would have had an interest in the matter if living, which renders the act in litigation probable, shall be considered as written *prima facie* evidence thereof.

**1227 [1193].** Contracts the object of which is an amount in excess of two hundred *pesos*, must be reduced to writing and cannot be proved by witnesses.

**1228 [1194].** A private instrument which alters the agreements contained in a public instrument, does not produce any effect as to third persons.

## CHAPTER VI.

### Of the Effect of Contracts.

**1229 [1195].** The effects of contracts extend actively and passively to the heirs and universal successors, unless the obligations arising therefrom are inherent in the person, or the contrary results from an express provision of the law, a clause of the contract, or the nature of the contract itself. Contracts cannot prejudice third persons.

**1230 [1196].** Creditors may, nevertheless, exercise all the rights and actions of their debtor, with the exception of those inherent in his person.

**1231 [1197].** Agreements made in contracts constitute a rule for the parties to which they must conform as to the law itself.

**1232 [1198].** Contracts are binding not only as to what is formally stated therein, but also as to all the consequences which can be considered as having been virtually comprised therein.

**1233 [1199].** Contracts cannot be set up against third



persons, nor be invoked by them, except in the cases of Arts. 1195 [1161] and 1196 [1162].

**1234** [1200]. The parties may by mutual consent extinguish the obligations created by contracts, and withdraw the real rights which they have transferred; and they may also by mutual consent revoke contracts, for the causes authorized by the law.

**1235** [1201]. In bilateral contracts one of the parties cannot bring an action to enforce its performance, unless he proves that he had himself fulfilled it or had offered to do so, or that his obligation is subject to a term.

**1236** [1202]. If a token has been given to bind the contract or to insure its performance, the person who gave it may withdraw from the contract, or not comply therewith, and forfeit the token. The person who received it, may also withdraw; and in such case he must return the token with an amount equal to its value. If the contract is fulfilled, the token must be returned in the condition in which it is. If it consists of a thing of the same kind as that which was to have been given under the contract, the token shall be considered a part of the prestation; but not if it is of a different kind, or if the obligation is one to do or refrain from doing something.

**1237** [1203]. When an agreement of avoidance has been embodied in the contract, whereby each of the parties reserves the power not to execute the contract on his part, if the other does not perform it, the contract may be resolved only by the party not at fault, and not by the other who failed to perform it. This clause is forbidden in a contract of pledge.

**1238** [1204]. In the absence of a special stipulation authorizing one of the parties to dissolve the contract if the other fails to comply therewith, the contract cannot be dissolved, and the performance thereof only may be demanded.

**1239** [1205]. Contracts entered into outside of the territory of the Republic are governed, as to their validity or nullity, their nature, and the obligations they produce, by the laws of the place where they have been made.

**1240** [1206]. Contracts which are immoral, and the recognition of which in the Republic would be injurious to the

rights, interests or conveniences of the State or of its inhabitants, are excepted from the provisions of the preceding article.

**1241** [1207]. Contracts entered into in a foreign country for the purpose of violating the laws of the Republic, are void in the territory of the State, even though not prohibited in the place where they were celebrated.

**1242** [1208]. Contracts entered into in the Republic for the violation of the rights and the laws of a foreign nation, are null and void.

**1243** [1209]. Contracts entered into in the Republic or without it, to be executed within the territory of the State, are governed as to their validity, nature, and obligations, by the laws of the Republic, whether the contracting parties be nationals or foreigners.

**1244** [1210]. Contracts entered into in the Republic for performance without it, are governed, as to their validity, their nature and obligations, by the laws and usages of the country in which they are to be executed, whether the contracting parties be nationals or foreigners.

**1245** [1211]. Contracts made in a foreign country for the purpose of conveying real rights in immovable property situated in the Republic, have the same force as those entered into within the territory of the State, provided they have been reduced to public instruments and are presented duly authenticated. When the ownership of real property is conveyed thereby, the tradition of the latter cannot be made and produce juridical effects until said contracts have been protocolized by order of a judge of competent jurisdiction.

**1246** [1212]. The place for the performance of contracts when no place for performance is designated therein, or when the nature of the obligation does not indicate it, is the place where the contract was entered into, if it be the domicile of the debtor, even though he subsequently changes his domicile or dies.

**1247** [1213]. If the contract was entered into at a place other than the domicile of the debtor, where on account of the circumstances it should not be that of its performance, the actual domicile of the debtor, even though not the same

he had at the time the contract was entered into, shall be the place where it is to be performed.

**1248** [1214]. If the contract was entered into between absent persons, by a private instrument, signed in different places, or through agents, or by letter, its effects, in the absence of the designation of a place for its performance, are governed with respect to each of the parties, by the laws of his domicile.

**1249** [1215]. In all contracts which are to be performed in the Republic, the debtor even though he does not have his domicile or residence therein, may nevertheless be sued before the judges of the State.

**1250** [1216]. If the debtor has his domicile or residence in the Republic, and the contract is to be performed without it, the creditor may sue him before the judges of his domicile, or before the judges of the place where the contract is to be performed, even though the debtor is not at such place.

## **TITLE II. OF THE CONJUGAL PARTNERSHIP.**

### **CHAPTER I.**

#### **Of Marriage Agreements.**

**1251** [1217]. Before the celebration of the marriage the spouses may enter into agreements upon the following matters only:

1. The designation of the property which each brings to the marriage.
2. The reservation to the wife of the right to administer certain of the real property which she brings to the marriage, or which she acquires thereafter on her own behalf.
3. The donations which the husband makes to the wife.
4. The donations which the spouses make to each other of the property which they may leave upon their death.

**1252** [1218]. Any agreement between the spouses on any other subject relating to their marriage, as well as any waiver

by either of them in favor of the other, or of the right to the acquets and gains of the conjugal partnership, is void.

**1253** [1219]. No marriage contract can be entered into, under the penalty of nullity, after the celebration of the marriage; nor can that made before the celebration, be revoked, altered or modified.

**1254** [1220]. The validity of matrimonial agreements, made outside of the Republic, is governed by the provisions of this Code relating to juridical acts executed without the territory of the Nation.

**1255** [1221]. Marriage contracts between persons who are unable to marry owing to an impediment, are void, even though the impediment subsequently disappears, or is dispensed with and the marriage celebrated.

**1256** [1222]. A minor who, under the law, is able to marry, may also enter into marriage agreements upon the objects mentioned in Article 1251 [1217], if the persons whose previous consent he requires in order to contract marriage are present at the execution thereof.

**1257** [1223]. Marriage agreements must be reduced to a public instrument, under the penalty of nullity, when the value of the property exceeds one thousand *pesos*, or if rights in real property are established therein. In the absence of notaries public, they shall be executed before the judge of the district and two witnesses. When the property does not amount to the sum of one thousand *pesos*, they may be entered into by a private instrument in the presence of two witnesses.

**1258** [1224]. If there is no public or private instrument showing the property which the spouses bring to the marriage, it shall be held that the marriage is contracted, by placing in a common stock the personal property and fungibles of both; and upon the dissolution of the partnership, they shall be considered as property acquired during the marriage. The same shall be held in the absence of written evidence of the movables and fungible things which the husband or wife have acquired during the marriage, by inheritance, legacy or donation.

**1259** [1225]. The public instrument embodying the marriage contract must set forth the names of the parties, those

of the fathers and mothers of the contracting parties, the nationality of the spouses, their religion, their age, their domicile and their residence at the time, the degree of relationship, if any, the signatures of the parents or tutors of each of the contracting parties, if minors, or that of a special curator if the parents have refused their consent to the marriage, and said consent is supplied by the judge.

**1260** [1226]. The wife cannot reserve the administration of her property, whether of that which she brings to the marriage, or of that which she acquires subsequently in her own name. She may reserve only the administration of specified real property, or of that which the husband donates to her.

**1261** [1227]. If the wife, after the celebration of the marriage, acquires property by donation, inheritance or legacy, the donors and the testator may impose the condition that it is not to be received and administered by the husband, and the wife may administer it with his permission, or with that of the judge, if the husband refuses to grant her permission, or is not able to do so.

**1262** [1228]. With relation to the husband and his heirs, the acknowledgment of the receipt of the dowry, in any form whatsoever, is proof of the obligation to return it to the wife or to her heirs.

**1263** [1229]. In relation to the creditors of the husband, the acknowledgment of the receipt of the dowry shall not prejudice them, unless such acknowledgment appears in the nuptial agreements, or some other public instrument executed before the celebration of the marriage, or unless it be established by a public instrument, testaments, or partitions, or by other instruments having similar force, that the wife acquired the property the receipt of which the husband acknowledges.

## CHAPTER II.

## Of Donations to the Wife.

**1264** [1230]. The donations which the husband makes to his wife, are governed by the provisions contained in the *Title Of Donations*.

**1265** [1231]. The wife cannot make any donation whatsoever to her husband in the marriage contract, nor waive any right accruing to her from the conjugal partnership.

**1266** [1232]. In order to decide whether the donations which the spouses make of the property left by them at the time of their death are inofficious<sup>30</sup> or not, the provisions of Arts. 1864 [1830] and 1865 [1831] shall be observed.

**1267** [1233]. When the donations which the spouses make of the property left at the death of either one of them, consist of specified property, either movable or immovable, such property cannot be alienated during the marriage, without the express consent of both spouses.

**1268** [1234]. These donations are valid even if the donor survives the donee, if the latter leave legitimate children. But when no legitimate children of the marriage or of another previous marriage are left, the donor may revoke them. If he fails to revoke them during his lifetime, or by his testament, the donation shall pass to the heirs of the donee.

**1269** [1235]. A donation made by the husband to his wife, or that which either makes to the other spouse of the property which he or she leaves upon his or her death, need not be accepted by the donee in order to make the donation valid.

**1270** [1236]. Donations by one spouse to the other, promised in the nuptial agreements to take effect after the death of either of them, cannot be revoked, except as an effect of divorce, or by virtue of the annulment of the marriage.

**1271** [1237]. When a clause has been embodied in the nuptial agreements providing for the usufruct of property

<sup>30</sup> That is to say, consisting of property of which they did not have the right to dispose under the law.

in favor of one of the spouses upon the death of the other, without limiting it to the case of such spouse not having ascendants or descendants, it shall not affect the *légitime* of such ascendants or descendants, and is valid only as to that portion of the property of which the deceased spouse could freely dispose.

**1272** [1238]. The donations made under the marriage contract are valid only if the marriage is celebrated and is not annulled, without prejudice to the provisions of Article 244 regarding putative marriages.

**1273** [1239]. The provisions of Articles 245 and 246 shall be observed as to donations made to a spouse in good or bad faith, if the putative marriage is annulled.

**1274** [1240]. All donations by reason of marriage are irrevocable, and can be revoked only if they are conditional and the condition is not performed, or if the marriage is not celebrated, or if it is annulled by a judgment having the force of *res judicata*, without prejudice to the provisions relating to putative marriages.

**1275** [1241]. A promise made to the husband by the parents of the wife, her relatives, or by other persons, to settle a dowry upon her cannot be proved other than by a public instrument.

**1276** [1242]. The person who promises a dowry for the wife, incurs delay in the delivery thereof from the date of the celebration of the marriage, if no term for the delivery has been stated in the respective instrument.

### CHAPTER III.

#### Of the Dowry of the Wife.

**1277** [1243]. The dowry of the wife is made up of all the property which she brings to the marriage, and of that which she acquires during the marriage, by inheritance, legacy or donation.

**1278** [1244]. Persons who have been the tutors of a wife under age, her parents, and in general persons who have funds belonging to her on any account whatsoever, cannot deliver them to the husband; they must deposit them in the public depositories, in the name of the wife. If they fail to do so, they continue to be bound to her, as they had been previously.

**1279** [1245]. In cases of inheritances or legacies due a wife under age, the funds must be deposited by the judge in the public depositories in her name.

**1280** [1246]. The real property purchased with funds belonging to the wife is her property, if the purchase was made with her consent and with the intention that she acquire it, this fact being set forth in the deed of purchase, as well as the source from which the wife obtained the money.

**1281** [1247]. Whatever is exchanged for the private property of the wife with her consent belongs to her also, and the origin of the property which she gave in exchange shall also be stated.

**1282** [1248]. Donations promised or made to the wife by reason of marriage, or as dowry, are governed by the provisions relating to gratuitous titles, and the persons promising or settling them, are bound only as donors are to donees in simple donations. They carry with them the implied condition of the marriage taking place, or having taken place.

**1283** [1249]. As long as the wife remains a minor, the husband requires judicial authorization to withdraw from the public depositories the funds belonging to her; to alienate securities of the national or provincial public debt registered in her name, to exchange her real property, or to alienate it, or to constitute real rights therein.

**1284** [1250]. The judge may grant him authorization only in case of necessity or manifest advantage to the wife.

**1285** [1251]. The appraisal of the property of the wife, whether real or movable, and the delivery thereof to the husband, even though the value set thereon is below its appraised value, does not deprive her of the ownership thereof, nor make it the property of the partnership or of the husband.

**1286** [1252]. If the wife is of full age, she may with the



permission of her husband, or both of them jointly may, without judicial authorization, alienate her real property as well as her registered securities, and freely dispose of the funds on deposit in the public depositories.

**1287 [1253].** If the husband, without authorization from the wife, alienates immovable property belonging to her, or constitutes real rights therein, the wife shall have the right in the former case to recover it, and in the latter, to avail herself of the rights of action vested in her as the owner thereof to release them from any incumbrances laid thereon without her consent.

**1288 [1254].** The husband is a debtor to the wife in the value of all of her property which at the time of the dissolution of the partnership is not represented by real property recorded in the name of the wife, by national or provincial securities, or by deposits in the public depositories in her name.

**1289 [1255].** The property which the husband brought to the marriage, and that which he subsequently acquired by donations, inheritances or legacies, may be alienated by him, without requiring the consent of the wife, or judicial authorization.

**1290 [1256].** When property belonging to the wife on which no value has been set is alienated during the marriage, the liability of the husband extends to the amount for which the alienation was made.

**1291 [1257].** The husband may alienate the movable property forming part of the dowry, with the exception of that which the wife may desire to retain.

**1292 [1258].** If insolvency proceedings have been taken against the husband, or if the marriage has been dissolved, and there are insolvency proceedings against the conjugal partnership, the wife is entitled, under an action of ownership, to the real or personal property remaining of what she brought into conjugal partnership, or which she subsequently acquired in her own name, either by exchange, or by purchase with her own funds. She is entitled also, as the owner thereof, to the securities of the national or provincial debt, and to the funds deposited in the public depositories in her name.

**1293** [1259]. The wife has a personal right of action only, for the recovery of what the husband or the partnership owes her, without any right of mortgage or privilege whatsoever, when the husband has not constituted an express mortgage in her favor.

**1294** [1260]. The wife may prove her credit against the property of the husband or of the conjugal partnership, by any of the means which can be employed by third personal creditors, except the confession of the husband, when there are other creditors.

## CHAPTER IV.

### **Beginning of the Partnership, Capital of the Spouses, and Assets of the Partnership.**

**1295** [1261]. The partnership begins from the date of the celebration of the marriage, and it cannot be stipulated to commence before or after.

**1296** [1262]. The conjugal partnership is governed by the rules relating to contracts of partnership, in so far as not in conflict with the express provisions of this title.

**1297** [1263]. The capital of the conjugal partnership consists of the private property which constitutes the dowry of the wife, and of the property which the husband contributes to the marriage, or which he may acquire thereafter by donation, inheritance or legacy.

**1298** [1264]. Property donated, or left by testament to the husband and wife jointly with a designation of specified parts, belongs to the wife as dowry, and to the husband as his own capital in the proportion determined by the donor or testator; and in the absence of any determination, equally to each of them.

**1299** [1265]. If the donations are onerous, there shall be deducted from the dowry and from the capital of the husband, or only from the dowry if it be a donation of the husband, the amount of the charges to be borne by the partnership.

**1300** [1266]. Property acquired by exchange for other property belonging to one of the spouses, or immovable property purchased with money belonging to one of them, and the material increase accruing to any object belonging to one of the spouses, forming a single body therewith by alluvion, building, planting, or through any other cause, belongs to the spouse making the exchange, or to whom the money or the principal object belonged.

**1301** [1267]. A thing acquired during the existence of the partnership does not belong to it, even though acquired under an onerous title, when the cause or title of the acquisition preceded it and it was paid for with property belonging to one of the spouses.

**1302** [1268]. Nor does the property which one of the spouses held before the commencement of the partnership under a vicious title, but which has been purged of its vice during the partnership, by any legal remedy, belong to the partnership.

**1303** [1269]. Nor the property which reverts to one of the spouses on account of the annulment or resolution of a contract, or by reason of the revocation of a donation.

**1304** [1270]. Nor the right of usufruct, which becomes merged with the ownership during the marriage, nor interest accruing in favor of one of the spouses before the marriage and paid thereafter.

**1305** [1271]. The property existing at the time of the dissolution of the partnership belongs to it as acquets and gains, in the absence of proof that it belonged to one of the spouses at the time of the celebration of the marriage, or that he or she acquired it thereafter by inheritance, legacy or donation.

**1306** [1272]. The property which each of the spouses or both acquire during the marriage under any title other than inheritance, donation, or legacy, also constitutes acquets and gains, as does the following:

Property acquired during the marriage by purchase or under some other onerous title, even though it be in the name of one of the spouses only.

That acquired by fortuitous events, such as lottery, gambling, betting, etc.

The natural or civil fruits of the common property, or of the private property of each of the spouses, collected during the marriage, or pendent at the time of the termination of the partnership.

The civil fruits of the profession, labor, or industry of both spouses, or of each of them.

That which either of the spouses receives for the usufruct of the property of the children by another marriage.

The improvements which may have increased the value of the private property of each of the spouses during the marriage.

The amount expended in the redemption of servitudes, or in any other object from which one of the spouses alone derives benefit.

**1307** [1273]. The property which should have been acquired by one of the spouses during the marriage, but which in fact was not acquired until after the dissolution of the partnership, on account of no notice thereof having been had or its acquisition or enjoyment having been unjustly interfered with, is considered to have been acquired during the marriage.

**1308** [1274]. Remuneratory donations made to one of the spouses, or to both for services on which no right of action could be based against the person who made them, do not form part of the partnership assets; but those made for services on which a right of action could be based against the donor, belong to the partnership, unless such services were rendered before the commencement of the conjugal partnership, as in such case the remuneratory donation does not belong to the partnership, but to the spouse who rendered the service.

## CHAPTER V.

### Charges of the Partnership.

**1309** [1275]. The following are charges upon the conjugal partnership:

1. The maintenance of the family and of the common children; and also of the legitimate children of one of the spouses; the support which one of the spouses is obliged to give to his or her ascendants.

2. The repair and maintenance in good condition of the private property of the husband or of the wife.

3. All the debts and obligations contracted during the marriage by the husband, and those contracted by the wife in cases in which she can legally bind herself.

4. Whatever is given or expended in establishing the children of the marriage in life.

5. Whatever is lost by fortuitous acts, such as lottery, gambling, betting, etc.

## CHAPTER VI.

### Administration of the Partnership.

**1310** [1276]. The husband is the legal administrator of all the property of the marriage, whether dotal or acquired after the constitution of the partnership, with the limitations set forth in this Title, and excepting the cases in which the administration is given the wife, of the entire partnership capital, or of her own property.

**1311** [1277]. He may alienate and encumber under an onerous title the property acquired during the marriage, reserving the rights of the wife, when the alienation is made in fraud of her rights. He may also make donations of his own property and of that gained during the partnership, in accordance with the provisions of the Title *Of Donations*.

**1312** [1278]. The husband cannot give in lease the rural property of the wife for more than eight years, nor her urban property for more than five. She and her heirs are obliged, upon the dissolution of the partnership, to respect the contract for a term not exceeding the limits stated.

**1313** [1279]. The lease may be made for a longer term,

if executed by the husband and wife, if the latter be of full age, or with the permission of the judge, if she be under age.

**1314** [1280]. The husband is liable for the obligations contracted by him, before or after the celebration of the marriage, without prejudice to the allowances he must make to the partnership, or the partnership to the husband.

**1315** [1281]. He is liable for the obligations contracted by the wife under a general or special power of attorney, or with his express or implied authorization, and the creditors may demand payment of him both from the property of the partnership and from his own property.

**1316** [1282]. The wife who performs acts of administration, with authorization from the judge, owing to a temporary impediment on the part of the husband, binds the latter as if the act had been performed by him.

**1317** [1283]. The creditors of the wife on account of her obligations antedating the marriage, may demand payment from the property acquired during the marriage, if the wife has no property of her own.

**1318** [1284]. The administration of the property of the conjugal partnership is transferred to the wife, when she is appointed curatrix of her husband. She has in such case the same powers and liabilities as the husband.

**1319** [1285]. She cannot, without special authorization from the judge, alienate either the real property of the husband, her own property, or that acquired during the marriage, or accept without the benefit of inventory an inheritance offered to her husband. Any act in violation of these limitations, renders her liable with her property, in the same manner as the husband would be with his property, if he should abuse of his administrative powers.

**1320** [1286]. All the acts and contracts of the wife acting as administratrix, not prohibited to her by the preceding article, are considered as acts of the husband, and bind the partnership and the husband.

**1321** [1287]. The wife who is the administratrix of the property may lease the real property belonging to the husband, under the same conditions as the latter may lease the property belonging to her.

**1322** [1288]. Upon the termination of the causes which transferred the administration to the wife, the husband recovers his administrative powers.

**1323** [1289]. If on account of the incapacity or the excuse of the wife, the curatorship of the husband of the property is entrusted to another person, the curator shall have the administration of all the property of the conjugal partnership, with the obligations and liabilities imposed on the husband.

**1324** [1290]. When the wife does not desire to submit the property of the partnership to such administration, she may request the separation thereof.

## CHAPTER VII.

### Of the Dissolution of the Partnership.

**1325** [1291]. The conjugal partnership is dissolved by the judicial separation of the property, by a decree annulling the marriage, and by the death of one of the spouses.

**1326** [1292]. During the union of the husband and of the wife, the latter alone, and not the husband, has the right to demand the separation of the property of both and of that acquired up to the time of the demand.

**1327** [1293]. A wife who is a minor cannot demand the separation of property without having a special curator, and without the intervention of the next friend of minors (*defensor de menores*).

**1328** [1294]. The wife has the right to demand the separation of property only when the improper administration of the husband causes her to run the risk of losing her own property, or when insolvency proceedings have been had against him.

**1329** [1295]. An action for the separation of property having been instituted or even before it has been brought, when there is danger in delay, the wife may demand that the

movable property belonging to her which is in the possession of the husband be attached, and that the alienation of the property of the husband, or of the partnership, be enjoined. She may also demand that she be allowed whatever may be necessary for the costs of these proceedings.

**1330** [1296]. The husband may oppose the separation of property, and give bond or mortgages to secure the property of the wife.

**1331** [1297]. Any lease made by the husband after the institution by the wife of the action for separation of property, is held to be simulated and fraudulent, if made without her consent or without judicial authorization. The receipt in advance of the price of lease or rental, is also considered simulated and fraudulent.

**1332** [1298]. The wife may attack as fraudulent any act or contract of the husband, prior to the action for the separation of property, in accordance with the provisions relating to acts in fraud of creditors.

**1333** [1299]. The separation of property having been decreed, the conjugal partnership is extinguished. The wife and the husband shall receive their own property, and that due them as acquets and gains, upon the liquidation of the partnership.

**1334** [1300]. During the separation, the husband and the wife must contribute to their own support, and to the support and education of their children, in proportion to their respective property.

**1335** [1301]. After the separation of property, the wife is not entitled to any part of what the husband earns thereafter, nor the latter to any part of what she earns.

**1336** [1302]. A wife separated as to property does not require authorization from the husband for acts and contracts relating to the administration of, nor to alienate her movable property; but she requires judicial authorization to alienate the real property, or to constitute real rights therein.

**1337** [1303]. The creditors of a wife separated as to property, on account of acts or contracts which she could legally enter into, have a right of action against her property.



**1338** [1304]. The judicial separation of property may terminate by agreement of the spouses, if they should reduce it to a public instrument, or if the judge so orders on the petition of both. Upon the termination of the judicial separation of property, the latter reverts to the state in which it was before the separation, as if the separation had never existed, all the legal acts of the wife during the time of the separation remaining valid, as if they had been authorized by the husband.

**1339** [1305]. In order to protect his future liability, the husband may demand that a judicial inventory be made of the property of the wife coming under the new administration, or the existence of the property may be determined by a public instrument signed by him and by the wife.

**1340** [1306]. In case of divorce, the innocent spouse has the right to demand the judicial separation of property, and with regard to the property, the effects of the divorce with respect to the spouses and to third persons, are governed by the provisions of the preceding articles, and those contained in Chapter X, Title *Of Marriage*.

**1341** [1307]. When in pursuance with the provisions of Articles 116 and 117, the judge has fixed the presumptive date of the death of the absent husband, the wife has the option, either to prevent the provisional exercise of the rights subordinated to the death of the husband, or to demand the judicial division of the property.

**1342** [1308]. She may avail herself of this right, even though she herself has requested a judicial declaration of the presumptive date of the death of her husband, and even though she has already elected to continue the conjugal partnership; but if she has decided in favor of the dissolution of the partnership, she cannot retract her election after its acceptance by the parties interested.

**1343** [1309]. If the wife elects in favor of the continuation of the partnership, she shall administer all the property of the marriage; but she shall not be permitted to elect in favor of the continuation of the partnership, if immediately thereafter, on account of the time which has elapsed, it

becomes necessary to decree the definite succession of the husband.

**1344** [1310]. The conjugal partnership does not continue beyond the date on which the definite succession is decreed.

**1345** [1311]. If the wife elects in favor of the dissolution of the conjugal partnership, her own property shall be separated, and the common property divided, the provisions of Book 4 of this Code relating to provisional succession being observed.

**1346** [1312]. When the marriage is annulled, the provisions of Articles 244 et seq. of Chapter XIII, Title *Of Marriage*, shall be observed as to the dissolution of the partnership.

**1347** [1313]. Upon the dissolution of the partnership by the death of one of the spouses, the inventory and division of the property shall be proceeded with in the manner prescribed in Book IV of this Code for the division of inheritances.

**1348** [1314]. When it becomes necessary to execute simultaneously the liquidation of two or more conjugal partnerships contracted by one and same person, all means of proof shall be admitted, in the absence of inventories, to determine the interest of each, and in case of doubt the property shall be divided among the different partnerships, in proportion to the time of their duration, and in proportion to the private property of each of the spouses.

**1349** [1315]. The acquets and gains of the conjugal partnership shall be equally divided between the husband and the wife, or their heirs, without consideration to the private capital of the spouses, and even through one of them has not contributed any property to the partnership.

**1350** [1316]. If there has been bigamy, and the woman in the second ostensible marriage acted in good faith, the legitimate wife is entitled to one-half of the acquets and gains acquired up to the time of the dissolution of the marriage. The second wife may recover from the share of the bigamist in the acquets and gains, and from the property contributed by him during the legitimate marriage, the acquets and gains to which she would have been entitled during her common life with him, if the marriage had been legitimate.

## CHAPTER VIII.

### Of the Restitution of Dotal Property.

**1351** [1317]. The restitution of dotal property lies in the same cases in which the community of that acquired during the marriage terminates, and in the case of a judicial separation of property, without divorce.

**1352** [1318]. The existing property of the wife must be returned to her in the condition in which it is, whether it has been appraised or not.

**1353** [1319]. If the dowry comprises credits or rights which have been lost without the fault of the husband, the latter discharges his obligation by the delivery of the respective titles or documents.

**1354** [1320]. The dotal immovables and the nonfungible movables which form part of the dowry, in the possession of the husband or forming part of his testate succession, must be returned to the wife within thirty days after the decree of divorce or judicial separation of property without divorce has been made, or after the date of the dissolution of the marriage, or after the date of the decree having the force of *res judicata* whereby the marriage was annulled.

**1355** [1321]. The money and the fungible property of the dowry or the value of the property not in the possession of the husband or in his testate succession, must be returned within a period of six months counted in the same manner.

**1356** [1322]. Upon the expiration of the aforementioned periods, the husband or his heirs who fail to return the dotal property, are in default for all legal purposes.

## TITLE III. OF THE CONTRACT OF PURCHASE AND SALE.

**1357** [1323]. There is a purchase and sale when one of the parties engages to transfer to another the ownership of

a thing, and the latter engages to receive it and pay therefor a certain price in money.

**1358** [1324]. No one can be compelled to sell, unless he is under a juridical necessity of doing so, which is present in the following cases:

1. When the purchaser has the right to purchase the thing by expropriation, for a cause of public utility.

2. When under an agreement or a testament, the obligation of selling the thing to a specified person is imposed upon the owner.

3. When a thing is indivisible, and belongs to a number of individuals, and any of them demands the disposal thereof at public sale or auction.

4. When the property of the owner of the thing has been sold at auction under a judicial execution.

5. When the law imposes upon the administrator of property belonging to another the obligation to convert into money all or part of the things under his administration.

**1359** [1325]. When the things are delivered in payment of what is owed, the act produces the same effects as a purchase and sale. The person making the delivery is subject to the consequences of eviction,<sup>31</sup> of the redhibitory vices,<sup>32</sup> of the undeclared real charges; but the debt paid is governed by the provisions of the *Title Of Payment*.

**1360** [1326]. The contract is not held to be a contract of purchase and sale, even though the parties so stipulate, if in or dreto make it such, someessential requisite is absent therefrom.

## CHAPTER I.

### Of the Thing Sold.

**1361** [1327]. All things which can be the object of contracts may be sold, even though they be future things, provided their alienation is not prohibited.

<sup>31</sup> See note preceding Art. 2123 [2089].

<sup>32</sup> See Art. 2198 [2164].

**1362** [1328]. If the thing has ceased to exist at the time of the execution of the contract, the latter shall be null and void. If only a part of the thing has been destroyed, the purchaser may either dissolve the contract or bring an action to recover the part still existing, the price being reduced in the proportion of this part to the whole thing.

**1363** [1329]. Things belonging to others cannot be sold. A person who has sold things belonging to others, even though in good faith, must compensate the purchaser for the damages sustained by him by reason of the annulment of the contract, if such purchaser was not aware that the thing belonged to another. The vendor cannot bring an action to annul the sale or recover the thing after he has delivered it. If the purchaser knew that the thing belonged to another, he cannot demand the return of the price.

**1364** [1330]. The nullity of the sale of a thing belonging to another is purged by the ratification thereof by the owner of the thing. It is also purged if the vendor subsequently becomes the universal or singular successor of the owner of the thing sold.

**1365** [1331]. A sale made of the totality of an undivided thing by one of the co-owners thereof is void, even as to the share of the vendor; but the latter must indemnify a purchaser who was unaware that the thing was owned in common with others for the damages sustained by him through the annulment of the contract.

**1366** [1332]. When future things are sold, the purchaser assuming the risk of their never coming into existence in their totality, or in any amount, or when existing things are sold, but subject to some risk, the purchaser assuming said risk, the sale is an aleatory sale.

**1367** [1333]. There is no thing sold if the parties do not determine it, or do not establish facts for its determination. A thing is determinate when it is a thing certain, and when it is a thing uncertain, if its species and quantity have been determined.

**1368** [1334]. The thing sold is considered indeterminate, when all present or future property, or a part thereof, is sold.

**1369** [1335]. The sale of a species of designated property is valid, however, even though the sale comprise all that which the vendor possesses.

**1370** [1336]. A sale made subject to trial or sample of the thing sold, and the sale of things which it is customary to try or sample before receiving them, are presumed to have been made under the suspensive condition that they will be personally satisfactory to the purchaser.

**1371** [1337]. When the purchaser delays trying or sampling the thing, the trial thereof shall be considered to have been made, and the sale closed.

**1372** [1338]. When things are sold as of a stated quality, and not subject to the personal approval of the purchaser, the latter does not have the option to refuse the thing sold. The vendor, upon proving that the thing is of the quality contracted for, may demand the payment of the price.

**1373** [1339]. A sale may be made as a whole, or by tale, weight, or measure. It is made as a whole, when the things are sold in a lump, forming a single whole and for a single price.

**1374** [1340]. A sale is by weight, tale, or measure, when the things are not sold in a lump or for a single price; or if even though the price be one, there is no unit in the object; or if there is no unit in the price, even though the things are designated in a lump.

**1375** [1341]. In a sale made as a whole, the contract is perfected the moment the parties have agreed on the price and on the thing.

**1376** [1342]. In sales made by weight, tale or measure, the sale is not perfected until the things have been weighed, counted, or measured.

**1377** [1343]. The purchaser may nevertheless compel the vendor to weigh, measure or count and deliver to him the thing sold; and the vendor may compel the purchaser to receive the thing counted, measured or weighed, and pay the price therefor.

**1378** [1344]. The sale of determinate immovable property may be made:

1. Without a statement of its area, and for a single price.
2. Without a statement of its area, but at the rate of a certain price per measure.
3. With a statement of the area, but under a certain number of measures, to be taken from a larger tract of land.
4. With a statement of the area, for a price for each measure, whether the total price be stated or not.
5. With a statement of the area, but for a single price, and not at so much for each measure.
6. Or of a number of immovables, with a statement of the area, but under the agreement that the area is not guaranteed, and that any difference, whether more or less, shall not produce any effect whatsoever in the contract.

**1379** [1345]. If the sale of the immovable has been made with a statement of the area it contains, the price being fixed per measure, the vendor must give the amount indicated. If its dimensions are found to be greater, the purchaser is entitled to take the excess, upon paying the value thereof at the rate stipulated. If its dimensions are found to be smaller, he is entitled to the return of a proportionate part of the price. In either case, if the excess or difference exceeds one-twentieth of the total area designated by the vendor, the purchaser may annul the contract.

**1380** [1346]. In all other cases, a statement of the dimensions does not entitle the vendor to an increase in the price on account of the excess area, nor does it entitle the purchaser to a reduction in the price on account of the lesser area, unless the difference between the actual area and that stated in the contract, is one-twentieth, with relation to the total area of the thing sold.

**1381** [1347]. In the cases of the preceding article, when there is an increase in the price, the purchaser may elect to dissolve the contract.

**1382** [1348]. If two or more immovables have been sold for a single price, with a designation of the area of each of them, and the dimensions of one are found to be smaller and those of another larger, the differences shall be set off against each other to the concurrent amount, and the action of the

purchaser and of the vendor shall lie only according to the rules established.

## CHAPTER II.

### Of the Price.

**1383** [1349]. The price is certain: when the parties fix it at a sum to be paid by the purchaser; when its determination is left to the decision of a specified person; or when it is certain with reference to another certain thing.

**1384** [1350]. When the person or persons named to fix the price are not willing to do so, or fail to fix it, the sale shall be void.

**1385** [1351]. The appraisal made by the person or persons designated to fix the price, is irrevocable, and there is no remedy to effect a change therein.

**1386** [1352]. When the price has been determined by the person designated to fix it, the effects of the contract shall be retroactive to the time it was entered into.

**1387** [1353]. The price is considered certain when, the thing sold not being an immovable, the parties fix it at the market value of the thing on the date of the sale, or at a certain amount above or below such value. The price shall then be determined by certificates issued by brokers, or by witnesses in places where there are no brokers.

**1388** [1354]. When the thing has been delivered to the purchaser without a determination of the price, or when there is some doubt as to the price fixed, it is presumed that the parties agreed on the current market price on the date of the sale at the place where the thing was delivered.

**1389** [1355]. When the price is not determined, or when the thing is sold for its fair value, or for the price which another might offer therefor, or when the price is left to the determination of one of the contracting parties, the contract is void.



**1390** [1356]. When the price consists in part of money and in part of something else, the contract is one of exchange or barter if the value of the thing is the greater, and otherwise it is a sale.

### CHAPTER III.

#### Of Persons Who Can Buy and Sell.

**1391** [1357]. Any person capable of disposing of his property may sell any of the things of which he is the owner; and any person capable of binding himself, may purchase things of any kind from any person capable of selling, with the exceptions of the following articles.

**1392** [1358]. A contract of sale cannot take place between husband and wife, even though they are judicially separated as to their property.

**1393** [1359]. Tutors, curators, and parents cannot, under any form whatsoever, sell their own property to the persons under their guardianship or paternal power.

**1394** [1360]. Emancipated minors cannot sell their real property, nor that of their wives or children, without judicial authorization.

**1395** [1361]. The following are forbidden to make purchases, even though at public sale, in person or through intermediaries:

1. Parents, of the property of the children who are under their paternal power.
2. Tutors, curators, of the property of the persons under their charge, and to purchase property for such persons, except in the cases and in the manner prescribed by the laws.
3. Executors, of the property of the estates in their charge.
4. Mandataries, of the property which they are charged to sell for the account of their principals.
5. Public employees, of property of the State, or of municipalities, with the administration or sale of which they are charged.

6. Judges, lawyers, prosecuting officials, next friends of minors, solicitors, court clerks and appraisers, of the property the subject of litigation before the court or tribunal before which they are practising or have practised their respective occupation.

7. Ministers of the Government, of national property or of the property of any public establishment, or civil or religious corporation, and the Minister-Secretaries of the provincial governments, of the provincial or municipal property, or of the property of the civil or religious corporations of the Provinces.

**1396** [1362]. The nullity of the purchases and sales prohibited in the preceding article cannot be pleaded or set up by the persons affected by the prohibition.

## CHAPTER IV.

### Of the Special Clauses Which May be Tacked to a Contract of Purchase and Sale.

**1397** [1363]. Parties who enter into a contract for the purchase and sale of a thing may, by means of special clauses, subject to conditions, or modify as they may deem proper, the obligations arising out of the contract.

**1398** [1364]. A clause not to alienate to any person whatsoever the thing sold is prohibited; but not as to a specified person.

**1399** [1365]. A *sale to the satisfaction of the purchaser* is one made with the clause that there shall be no sale, or that the sale is to be canceled, if the thing sold does not satisfy the purchaser.

**1400** [1366]. A *sale with a covenant of redemption* is one made with the clause that the vendor may recover the thing sold and delivered to the purchaser, upon returning to the latter the price received, with an increase or reduction therein.

**1401** [1367]. A *covenant of resale* is a stipulation that the purchaser may return the thing purchased to the vendor, and receive from him the price paid, with an increase or reduction therein.

**1402** [1368]. A *covenant of preference* is the stipulation that the vendor may recover the thing sold and delivered to the purchaser, and be given the preference over any other person upon offering the same amount, if the purchaser desires to sell it.

**1403** [1369]. A *covenant of better purchaser* is a stipulation to the effect that the sale shall be set aside, if another purchaser appears and offers a better price.

**1404** [1370]. A conditional purchase and sale produces the following effects, if the condition be a suspensive one:

1. While the condition is pending, the vendor is not obliged to deliver the thing sold, nor the purchaser to pay the price, and he shall only have the right to demand the adoption of conservatory measures.

2. If before the fulfillment of the condition, the vendor has delivered the thing sold to the purchaser, the latter does not acquire the ownership thereof, and shall be considered as the manager of a thing belonging to another.

3. If the purchaser, however, has paid the price, and the condition is not fulfilled, reciprocal restitution of the thing and the price shall be made, the interest on the latter being set off against the fruits of the former.

**1405** [1371]. If the condition be a resolutory one, the purchase and sale shall have the following effects:

1. The vendor and purchaser are bound as if the sale were not conditional, and if the thing sold has been delivered, the vendor, while the condition is pending, is entitled only to demand the adoption of measures for the preservation of the thing.

2. If the condition is fulfilled, the provisions relating to obligations to return the things to their owners shall be observed; but the vendor shall not again acquire the ownership of the thing unless the purchaser makes delivery thereof to him.

**1406** [1372]. In case of doubt, a conditional sale shall be considered as made under a resolutive condition, whenever the vendor has delivered the thing to the purchaser before the fulfillment of the condition.

**1407** [1373]. A sale with a clause giving the right to the purchaser and vendor to withdraw from the contract, is considered to have been made subject to a resolutive condition, even though the vendor has not delivered the thing to the purchaser. If delivery has been made, or if the price of the thing sold has been paid, the clause permitting withdrawal shall have the effects of a sale with a covenant of *redemption*, if stipulated in favor of the vendor; or it shall have the effects of a *resale* covenant, if stipulated in favor of the purchaser.

**1408** [1374]. If the sale is made with an avoidance clause, it shall be considered to have been made subject to a resolutive condition. Such a clause is forbidden in the sale of personal property.

**1409** [1375]. A sale made with an avoidance clause shall have the following effects:

1. If a certain time has been stipulated for the payment of the price, the vendor may bring an action for the resolution of the contract, at any time after the expiration of the term, if the price is not paid on said day.

2. If no term has been stipulated, the purchaser shall not be in default as to the payment of the price until after a judicial demand for payment has been made.

3. The vendor may either bring an action for the resolution of the sale, or demand the payment of the price. If he prefers the latter expedient, he cannot subsequently sue for the resolution of the contract.

4. If, after the expiration of the term for payment, the vendor receives a part of the price only, without reserving the right to resolve the sale, it shall be held that he has waived such right.

**1410** [1376]. A sale with an avoidance clause is equivalent to a sale with a clause to reserve the ownership of the thing, until payment of the price.

**1411** [1377]. A sale to the satisfaction of the purchaser, is considered as made under a suspensive condition, and the purchaser shall be considered a borrower in a loan for use (*commodatum*), until he expressly or impliedly declares that the thing is to his satisfaction.

**1412** [1378]. There is an implied declaration by the purchaser that a thing is to his satisfaction, when he pays the price thereof, without making any reservation whatsoever, or when a term having been fixed for such declaration, the term expires without his having made any declaration whatsoever.

**1413** [1379]. If no term for the declaration by the purchaser has been fixed, the vendor may intimate to him judicially that he make his declaration within a peremptory period, with the warning that his failure to do so will extinguish his right to resolve the sale.

**1414** [1380]. Movables cannot be sold subject to a covenant of redemption.

**1415** [1381]. The longest term which can be stipulated for redemption cannot exceed three years, from the date of the contract.

**1416** [1382]. The term of three years runs against persons of all kinds, even though incapacitated, and upon the expiration thereof, the right of the vendor to resolve the sale is extinguished, and the purchaser becomes the irrevocable owner thereof.

**1417** [1383]. When the vendor recovers the thing sold, the fruits thereof and the interest on the price of the sale shall be set off against each other.

**1418** [1384]. The vendor is obliged to return to the purchaser, not only the price of the sale, but to reimburse him also for the expenses incurred in connection with the delivery of the thing sold, the cost of the contract, as well as for the improvements to the thing which are not voluntary improvements; and he cannot enter into possession of the thing until he has settled these obligations.

**1419** [1385]. The purchaser is obliged to return the thing with all its accessories, and to answer for the loss of the thing and its deterioration through his fault.

**1420** [1386]. The right of the vendor may be assigned, and passes to his heirs. The creditors of the vendor may exercise it in place of the debtor.

**1421** [1387]. If the right passes to two or more heirs of the vendor, or if the sale has been made by two or more co-owners of the thing sold, the consent of all the persons interested shall be necessary to recover it.

**1422** [1388]. The obligation to permit the redemption passes to the heirs of the purchasers, even though they be minors, and it passes also to the third grantees of the thing, even though in the sale made to them it has not been stated that the thing sold was subject to a covenant of redemption.

**1423** [1389]. If each of the co-owners of an undivided estate has sold his share separately, he may exercise his right of action with the same separation as to his respective share, and the purchaser cannot compel him to redeem the entire estate.

**1424** [1390]. If the purchaser has left a number of heirs, the action of the vendor can be brought against each of them only as to his respective share, whether the thing sold is undivided, or whether it has been divided among the heirs. But if the inheritance has been divided, and the thing sold has fallen to one of the heirs, the action of the vendor may be directed against him for the entire thing.

**1425** [1391]. The provisions established with respect to the vendor are applicable without exception to redemption when stipulated in favor of the purchaser.

**1426** [1392]. A sale with a covenant of preference does not entitle the vendor to recover the thing sold, unless the purchaser desires to sell it or surrender it in payment, and not when he grants it under other contracts, or constitutes real rights therein.

**1427** [1393]. The vendor is obliged to exercise his right of preference within three days, if the thing be a movable, after the purchaser has notified him of the offer he may have received therefor, under the penalty of losing his right if he does not exercise it within that time. If it be an immovable, after ten days, under the same penalty. In either case, he

shall be obliged to pay the price found by the purchaser, or more or less, if they have made any agreement as to the price. He is also obliged to satisfy any other advantages which the purchaser may have found, and if unable to satisfy them, the preference covenant shall be without effect.

**1428** [1394]. The purchaser is obliged to inform the vendor of the price and the advantages offered him for the thing, and may for such purpose cause a judicial intimation to be served; and if he should sell it without notifying the vendor, the sale shall be valid; but he must indemnify the latter for any damage sustained by him.

**1429** [1395]. If the sale is to be made by public auction, and the thing is a movable, the vendor shall not have any right whatsoever. If it is an immovable, the vendor shall have the right to be notified of the date and place where the auction is to be held. If he is not notified by the vendor, or otherwise, he must be indemnified for any damage sustained by him.

**1430** [1396]. The right acquired under a preference covenant cannot be assigned nor does it pass to the heirs of the vendor.

**1431** [1397]. A better purchaser covenant may be assigned and passes to the heirs of the vendor. The creditors of the vendor may also exercise said right in case of insolvency proceedings.

**1432** [1398]. A better purchaser covenant is considered as made subject to a resolutory condition, in the absence of an express agreement that it was to have the character of a suspensive condition.

**1433** [1399]. The higher price, or the betterment offered, must be for the thing in the condition in which it was when sold, without any subsequent increase or improvement.

**1434** [1400]. When the thing sold is a movable, a better purchaser covenant cannot be stipulated.

When the thing is an immovable, the covenant cannot exceed a term of three months.

**1435** [1401]. The vendor must inform the purchaser of the identity of the better purchaser, and what greater advantages

he offers. If the purchaser proposes similar advantages, he shall be entitled to preference; otherwise the vendor may dispose of the thing to the new purchaser.

**1436** [1402]. When the sale is made by two or more vendors in common, or to two or more purchasers in common, neither of them can be a new purchaser.

**1437** [1403]. There is no betterment on the part of the new purchaser giving rise to the covenant of a better purchaser, unless he is to purchase the thing, or receive it in payment, and not when he proposes to acquire it under any other contract.

**1438** [1404]. If the sale is an aleatory sale, on account of future things having been sold, the purchaser assuming the risk that they may not come into existence, the vendor is entitled to the full price, even though the thing does not come into existence, if there has been no fault on his part.

**1439** [1405]. When the sale is an aleatory sale on account of future things having been sold, the purchaser assuming the risk that they may not come into existence, in any amount, the vendor is also entitled to the full price, even though the things should come into existence in an amount lower than that stated; but if the thing should not come into existence, there shall be no sale on account of the absence of an object, and the vendor shall return the price, if he received it.

**1440** [1406]. When the sale is an aleatory sale on account of existing things subject to some risk, having been sold, the purchaser assuming such risk, the vendor is likewise entitled to the full price, even though the thing has ceased to exist entirely, or in part, on the date of the contract.

**1441** [1407]. The aleatory sale of the preceding article may be annulled as dolous by the aggrieved party, if he proves that the other party was not unaware of the result of the risk to which the thing was subject.



## CHAPTER V.

### Of the Obligations of the Vendor.

**1442** [1408]. The vendor cannot change the condition of the thing sold, and is obliged to preserve it as it was the day of the contract, until he delivers it to the purchaser.

**1443** [1409]. The vendor must deliver the thing sold, free from all other possession, and with all its accessories, on the date stipulated, and if no date has been stipulated, the day the purchaser demands it.

**1444** [1410]. The delivery must be made at the place agreed on, and if no place has been designated, at the place where the thing sold was located at the time of the contract.

**1445** [1411]. The vendor is also obliged to receive the price at the place agreed on, and in the absence of an agreement on the subject, at the place and time of the delivery of the thing, if the sale has not been made on credit.

**1446** [1412]. If the vendor fails to deliver the thing at the time fixed in the contract, the purchaser may demand the resolution of the sale, or the delivery of the thing.

**1447** [1413]. If the vendor is unable to deliver the thing, the purchaser may demand the immediate return of the price paid by him, without being obliged to wait for the inability of the vendor to cease.

**1448** [1414]. The vendor must warrant the thing sold, answering for eviction to the purchaser if defeated in court, in an action of revendication,<sup>33</sup> or some other real action. He is also answerable for the redhibitory vices of the thing sold.

**1449** [1415]. The vendor must defray the expenses of the delivery of the thing sold, in the absence of an agreement to the contrary.

**1450** [1416]. Until the vendor makes tradition of the thing sold, the risks of the thing, as well as its fruits and accessories, shall be governed by the provisions of the Title

<sup>33</sup> See note to Art. 2792 [2758].

*Of Obligations to Give*, whether the thing sold be a certain or an uncertain thing.

**1451** [1417]. The provisions hereinafter contained regarding the tradition in general of things, are applicable to the tradition of things sold.

**1452** [1418]. The vendor is not obliged to deliver the thing sold if the purchaser has not paid him the price.

**1453** [1419]. Nor is he obliged to deliver the thing, when he has given time for the payment, if after the sale the purchaser becomes insolvent, unless he furnish security for payment at the time agreed on.

**1454** [1420]. When the thing sold is a movable, and the vendor does not make tradition thereof, the purchaser, if he has already paid the price in whole or in part, or has purchased on credit, has the right either to dissolve the contract, and demand the return of whatever he may have paid, with interest on account of the delay and indemnity for damages; or to demand the delivery of the thing and compensation for damages.

**1455** [1421]. When the thing is fungible, or consists of amounts which the vendor has sold to another, he is entitled to demand a corresponding amount of the same species and quality, and indemnity for damages.

**1456** [1422]. When the thing sold is an immovable, purchased on credit without a term having been stated, or if the time for payment has already expired, the purchaser is only entitled to sue for the delivery of the immovable, upon depositing the price thereof in court.

**1457** [1423]. The provisions regarding *default* and its effects in the performance of obligations, apply to the purchaser and vendor, if they fail to fulfill in due time the obligations of the contract, or those they have specially stipulated.

## CHAPTER VI.

### Of the Obligations of the Purchaser.

**1458** [1424]. The purchaser must pay the price of the thing purchased, at the place and time fixed in the contract. In the absence of an agreement on the subject, he must make payment at the time and place where the thing is delivered. If the sale was made on credit, or if the usage of the country grants a certain term for payment, the price must be paid at the domicile of the purchaser. The latter must also pay the costs of the deed or bill of sale, and the cost of the receipt of the thing purchased.

**1459** [1425]. If the purchaser has good grounds to fear that he will be disturbed by an action for revendication of the thing, or by any real action, he may withhold the payment of the price, unless the vendor furnishes security for its return.

**1460** [1426]. The purchaser may refuse to pay the price if the vendor fails to deliver to him exactly what is stated in the contract. He may also refuse to pay the price, if the vendor seeks to deliver the thing sold without its appurtenances or accessories, or things of a kind or quality different from that stated in the contract; or if he seeks to deliver the amount of things sold in parts, and not in a lump, as he has contracted to do.

**1461** [1427]. The purchaser is obliged to receive the thing sold within the term stipulated in the contract, or within that of local usage. In the absence of a stipulated or usual term, immediately after the purchase.

**1462** [1428]. If a purchaser for cash does not pay the price of the sale, the vendor may refuse to deliver the movable thing sold.

**1463** [1429]. If the purchaser does not pay the price of a movable thing sold on credit, the vendor shall only be entitled to recover interest on account of the delay, and cannot demand the resolution of the sale.

**1464** [1430]. If the purchaser of a movable does not accept it, the vendor, after delay has begun to run against him, has the right to charge him the costs of preservation and damages; and he may obtain authorization from the judge to deposit the thing sold in a specified place, and sue for the payment of the price or the resolution of the sale.

**1465** [1431]. When an immovable thing has been sold and the vendor has received all or part of the price, or when the sale has been made on credit and the term for payment has not expired, and the purchaser refuses to receive the immovable, the vendor has the right to recover the costs of preservation and indemnity for damages and to place it in judicial deposit for the account and risk of the purchaser.

**1466** [1432]. If the purchaser does not pay the price of an immovable purchased on credit, the vendor shall only have the right to charge interest on account of the delay and not to demand the resolution of the sale, unless the contract contains an avoidance clause.

**1467** [1433]. The purchaser cannot refuse to pay the price of the immovable purchased because it is subject to a mortgage, if the mortgage can be redeemed immediately by him or by the vendor.

#### TITLE IV. OF THE ASSIGNMENT OF CREDITS.

**1468** [1434]. There is an assignment of a credit, when one of the parties binds himself to transfer to the other party his claim against his debtor, delivering to him the documentary evidence of his credit, if there be any.

**1469** [1435]. If the credit right is assigned for a price in money, or sold to the highest bidder, or given in payment, or allotted in the execution of a judgment, the assignment shall be governed by the provisions relating to the contract of purchase and sale, in so far as not amended in this Title.

**1470** [1436.]. If the credit is assigned for another thing having a value in itself, or for another credit right, the assign-

ment shall be governed by the provisions relating to the contract of exchange, in so far as not amended in this Title.

**1471** [1437]. If the credit is assigned gratuitously, the assignment shall be governed by the provisions relating to the contract of donation, likewise in so far as not amended in this Title.

**1472** [1438]. The provisions of this title do not apply to bills of exchange, notes payable to order, shares of stock payable to bearer, nor to actions and rights for which a special mode of transfer was provided when they were constituted.

**1473** [1439]. Persons who can purchase and sell, may acquire and alienate credits under an onerous title, in the absence of a law expressly forbidding it.

**1474** [1440]. Herefrom are excepted emancipated minors, who cannot, without express judicial authorization, assign bonds of the national or provincial public debt, stocks in commercial or industrial companies, and credits exceeding five hundred *pesos*.

**1475** [1441]. There can be no assignment of rights between persons who cannot enter into a contract of purchase and sale with each other.

**1476** [1442]. Nor can there be an assignment to the administrators of public institutions, or of civil or religious corporations, of credits against such establishments; nor to private or commissioned administrators, of credits of their principals or constituents; nor can any assignment be made to lawyers or judicial solicitors of rights of action of any kind, derived from the proceedings in which they are discharging or have discharged the duties of their office; nor to other officials of the administration of justice, of judicial rights of action of any nature whatsoever coming under the jurisdiction of the court or tribunal in which they are rendering services.

**1477** [1443]. The assignment is prohibited to the Ministers of the State, the Governors of Provinces, employees of municipalities, of credits against the Nation, or against any public institution, or civil or religious corporation; and of credits against the provinces in which the Governors are

discharging their duties, or of credits against the municipalities, to the employees thereof.

**1478** [1444]. Any incorporeal object, any rights and any chose in action which is in commerce,<sup>34</sup> may be assigned, provided the cause be not opposed to an express or implied prohibition of the law or to the title of the credit itself.

**1479** [1445]. Actions based upon rights inherent in persons, or which comprise matters of a similar nature cannot be assigned.

**1480** [1446]. Conditional or eventual credits, such as credits which are demandable, aleatory credits, credits subject to a term, or litigious credits may be the object of an assignment.

**1481** [1447]. Rights in future things, such as the natural or civil fruits of an immovable, may likewise be assigned in advance.

**1482** [1448]. Credits which may arise out of agreements which have not as yet been concluded, as well as those arising out of agreements which have already been concluded, may also be assigned.

**1483** [1449]. The assignment of the rights of use and habitation, the hopes of succession, pensions, military or civil retired pay, or those resulting from civil or military reforms, is prohibited, excepting solely as to that part which by provision of the law may be attached for the satisfaction of obligations.

**1484** [1450]. A husband is forbidden to assign the securities of the national or provincial public debt, registered in the name of his wife, without her express consent, if she be of age, and without her consent and that of the local judge, if she be under age.

**1485** [1451]. Parents are also forbidden to assign such securities registered in the name of the children under their paternal power, without express authorization from the judge of the territory.

**1486** [1452]. In all cases in which tutors, curators, administrators, executors and mandataries are forbidden to sell, they are forbidden to make assignments.

<sup>34</sup>See note to Art. 1535.

**1487** [1453]. The right to future support cannot be assigned, nor the right acquired under a covenant of preference in a purchase and sale.

**1488** [1454]. All assignments must be made in writing, under penalty of nullity, whatever be the value of the right assigned, and even though the value does not appear in a public or private instrument.

**1489** [1455]. Herefrom are excepted the assignments of litigious actions, which cannot be made under penalty of nullity other than by a public instrument, or by a judicial act embodied in the respective record; and instruments payable to bearer, which may be assigned by their tradition.

**1490** [1456]. When the assignment is made by a private instrument, it may take the form of an endorsement; but it shall not have the special effects prescribed in the Code of Commerce, if the instruments of the credit are not payable to order.

**1491** [1457]. The ownership of a credit passes to the assignee as an effect of the assignment, by the delivery of the instrument, if there be any.

**1492** [1458]. The assignment includes *per se* the right to summary execution proceedings on the instrument which is evidence of the credit, if the instrument has such force, even though the assignment be made under private signature, and all the rights accessory thereto, such as security, mortgage, pledge, the accrued interest and the privileges<sup>35</sup> of the credit which are not merely personal in character, with the power to exercise them, which arises out of the credit which existed.

**1493** [1459]. With regard to third persons who have a legitimate interest in opposing the assignment in order to preserve rights acquired after the date thereof, the ownership of the credit is not transferable to the assignee, except upon notification of the transfer to the debtor of the credit assigned, or by acceptance of the transfer on the part of the latter.

**1494** [1460]. The notification of the assignment is valid, even though notice of the instrument whereby the assignment

<sup>35</sup> See Art. 3909.

is made be not served, if the debtor is notified of the assignment agreement itself, or of the substance thereof.

**1495** [1461]. The knowledge which the debtor of the credit assigned may have acquired of the assignment indirectly is not equivalent to service of notice thereof, or to its acceptance, and does not prevent him from setting up the plea of non-performance of the formalities prescribed.

**1496** [1462]. When the facts and the circumstances of the case show on the part of the debtor collusion with the assignor, or grave imprudence, the transfer of the credit, even though notice thereof has not been served nor the transfer accepted, produces all its effects with respect to him.

**1497** [1463]. The foregoing provision is applicable to a second assignee guilty of bad faith, or of grave imprudence, and the assignment, even though notice thereof has not been served, nor the assignment accepted, may be set up against him on account of the mere knowledge he may have obtained thereof.

**1498** [1464]. In the event of the bankruptcy of the assignor, the notice of the assignment, or the acceptance thereof, may be made after suspension of payment; but it would produce no effect with respect to the creditors of the estate of the bankrupt, if made after the proceedings upon the adjudication of bankruptcy.

**1499** [1465]. The notification or acceptance of the assignment is void, if the credit assigned is under attachment; but the notification is valid as to the other creditors of the assignor, or as to the other assignees who did not demand the attachment.

**1500** [1466]. If a number of notifications of an assignment have been served on the same day, the different assignees shall rank equally, even when the assignments have been made at different hours of the day.

**1501** [1467]. The notification and acceptance of the transfer operates as an attachment of the credit in favor of the assignee, independently of the delivery of the instrument constituting the credit, and even though a prior assignee were in possession of the instrument; but it is not valid with respect



to other persons interested, if notice thereof is not served by a public act.

**1502** [1468]. The debtor of the credit assigned is discharged from the obligation by payment to the assignor before service of notice or the acceptance of the transfer.

**1503** [1469]. He may likewise set up against the assignee any other cause of extinguishment of the obligation, and any presumption of discharge against the assignor, before the fulfillment of one formality or the other, as well as the same exceptions and defenses which he could have set up against the assignor.

**1504** [1470]. When there are two successive assignees of the same credit, the preference shall be shown to the one who first notified the debtor of the assignment, or who first obtained his authentic acceptance, even though his transfer be of a later date.

**1505** [1471]. The creditors of the assignor may, at any time before notification of the transfer of the credit, cause the credit assigned to be attached; but notification or acceptance after the attachment imports opposition to the person who has sought the attachment.

**1506** [1472]. Even though the notification or acceptance of the transfer of the credit has not been made, the assignee may undertake with respect to third persons, all acts necessary for the preservation of the credit assigned.

**1507** [1473]. The assignor retains until service of notice, or the acceptance of the assignment, the right to perform, both with respect to third persons and the debtor himself, all acts necessary for the preservation of the credit.

**1508** [1474]. The debtor may set up against the assignee all the defenses which he could set up against the assignor, even though he did not make any reservation whatsoever when notified of the assignment, or even though he accepted it purely and simply, with the sole exception of compensation.<sup>35</sup>

**1509** [1475]. The partial assignee of a credit does not enjoy any right of preference over the assignor, unless the latter has expressly granted him priority, or has otherwise guaranteed to him the collection of his credit.

<sup>35</sup> See note 11, p. 118.

**1510** [1476]. An assignor in good faith warrants the existence and legality of the credit at the time of the assignment, unless he has assigned it as doubtful; but he is not answerable for the solvency of the debtor or of his sureties, unless the insolvency be prior and publicly known.

**1511** [1477]. If the credit did not exist at the time of the assignment, the assignee is entitled to restitution of the price paid, with indemnity for damages; but he is not entitled to demand the difference between the face value of the credit assigned, and the price of the assignment.

**1512** [1478]. The assignee may recover from an assignor in bad faith, the difference between the face value of the credit assigned and the price of the assignment.

**1513** [1479]. If the debt existed and had not been paid when due, the liability of the assignor is limited to restitution of the price received, and to the payment of the expenses incurred in connection with the contract.

**1514** [1480]. If the assignor acted in bad faith, knowing that the debt was not recoverable, he shall be liable for any of the damages he may have caused the assignee.

**1515** [1481]. The assignee cannot proceed against the assignor in the cases referred to, until after having discussed <sup>37</sup> the property of the debtor, and the bonds or mortgages constituted for the security of the credit.

**1516** [1482]. The assignee loses all rights to the guaranty of the present or future solvency of the debtor, when on account of the absence of conservatory measures, or through some other fault on his part, the credit or the security which guaranteed it has perished.

**1517** [1483]. A mere extension of the term granted the debtor by the assignee, does not deprive him of his rights against the assignor, unless it appears that the debtor was solvent when the credit became demandable.

**1518** [1484]. If the assignment was gratuitous, the assignor is not answerable to the assignee, either for the existence of the credit assigned, or the solvency of the debtor.

<sup>37</sup> That is to say, until after he has exhausted all his remedies against said property, bonds, etc.

**TITLE V. OF EXCHANGE.**

**1519** [1485]. The contract of barter or exchange takes place when one of the contracting parties binds himself to transfer to the other the ownership of a thing, provided the latter gives him the ownership of another thing.

**1520** [1486]. If one of the parties has received the thing promised him in exchange, and has good grounds to believe that it does not belong to the person who gave it, he cannot be compelled to deliver the thing offered by him, and may demand the annulment of the contract, even though he is not disturbed in the possession of the thing received.

**1521** [1487]. The annulment of a contract of exchange is effective against the third parties in possession of the immovable thing delivered to the party against whom the annulment may have been pronounced.

**1522** [1488]. A party to an exchange who has alienated the thing given to him in exchange, knowing that it did not belong to the party from whom he received it, cannot annul the contract, until the possessor to whom he has transferred the thing, brings an action against him for the annulment of the contract whereby he acquired it.

**1523** [1489]. A party to an exchange who is dispossessed of the thing he has received in exchange, may, at his option, demand either the return of his own thing, or the value of that given him in exchange, with indemnity for damages.

**1524** [1490]. Persons unable to buy and sell, cannot exchange.

**1525** [1491]. Things which cannot be sold, cannot be exchanged.

**1526** [1492]. In all matters not specially provided for in this Title, exchange is governed by the provisions relating to sales.

**TITLE VI. OF LEASE AND HIRE.**

**1527** [1493]. There is a lease or hire when two parties mutually bind themselves, one to grant the use or enjoyment of a thing, or to do a piece of work, or to render a service; and the other to pay a stated price in money for such use, enjoyment, work or service.

The person who pays the price, is called in this Code the *lessee*, *tenant*, or *hirer*, and the person who receives it, the *lessor* or *owner*. The price is also called *lease* or *rental*.

**1528** [1494]. A contract of lease or hire is perfected by the mutual consent of the parties.

All the provisions relating to price, consent and other essential elements of a contract of purchase and sale, are applicable to a contract of lease or hire.

**1529** [1495]. All the active servitudes of the immovable leased, and the fruits and ordinary products are included in the contract, in the absence of an express reservation; but extraordinary fruits or products are not included, nor the lands accruing by alluvion, if the lessee does not pay a proportionate increase in the lease or rental.

**1530** [1496]. The rights and obligations arising out of a contract of lease or hire, pass to the heirs of the lessee and lessor.

**1531** [1497]. The lessor cannot rescind the contract on the ground that he needs the thing for his own use, or that of his family.

**1532** [1498]. When the estate leased is alienated, by any juridical act whatsoever, the lease continues in force for the term stipulated.

## CHAPTER I.

### Of the Things which can be the Subject of the Contract of Lease or Hire.

**1533** [1499]. Movables which are not fungible, and real property without exception may be the subject of lease or hire.

**1534** [1500]. Even indeterminate things may be the subject of a contract of lease or hire.

**1535** [1501]. Things which are out of commerce,<sup>28</sup> and which cannot be alienated, or which cannot be alienated without previous permission or authorization, may be given in lease or hire, unless they are out of commerce on account of being injurious to the public welfare, or offensive to good morals and customs.

**1536** [1502]. Leases of national, provincial or municipal property, or of the property of corporations, or of establishments of public utility, are governed by the provisions of the administrative law or by those which may be peculiar thereto. The provisions of this Code shall be applicable thereto subsidiarily only.

**1537** [1503]. The use for which a thing is leased or hired, must be a chaste use, and one not opposed to good morals. Otherwise, the contract is null and void.

**1538** [1504]. When the use to be made of the thing is stated in the contract, the lessee cannot apply the thing to any other use. If the enjoyment to be made of the thing is not stated, it shall be such as it is destined to render by its nature, or that to which it is applied by the local customs. The lessor may prevent the lessee from using the thing for any other purpose.

<sup>28</sup> "Another division of property made by some of the writers is into things in commerce, or capable of being the subject of individual ownership and transfer, and things out of commerce." Howe, *Studies in the Civil Law*, p. 78.

## CHAPTER II.

### Of the Term of Leases.

**1539** [1505]. A contract of lease cannot be entered into for a term exceeding ten years. Any lease or hire for a longer term shall terminate at the end of ten years.

**1540** [1506]. When the lease is that of an estate, the fruits of which are gathered every year, and no term has been determined in the contract, it is understood as made for one year. If the lease be that of an estate, the fruits of which are not gathered until after a number of years, the lease is considered as made for the full term necessary to permit the lessee to gather the fruits.

**1541** [1507]. The lessee of furnished houses or rooms, if no term has been stipulated, but the price of which has been fixed by years, months, weeks, or days, is considered as made for the time covered by the price.

**1542** [1508]. When the lease is for a stated object, it is considered as made for the time necessary to fulfill the object of the contract.

**1543** [1509]. In the lease of urban property, if no term has been fixed, the lessor may dispossess the lessee at any time; but the latter shall be allowed forty days to vacate, counted from the date he is notified of the dispossession proceedings, by the judge having jurisdiction of the proceedings.

## CHAPTER III.

### Of the Capacity to Give or Take Things in Lease or Hire.

**1544** [1510]. Persons who have the administration of their property may lease or hire their things, and take in lease or hire those belonging to others, without prejudice to the limitations upon their right by special laws.

**1545** [1511]. The administrators of property belonging to others may lease or hire, also reserving the limitations placed by the law upon their right.

**1546** [1512]. The co-owner of an undivided thing cannot lease it, not even as to the share belonging to him, without the consent of the other co-owners.

**1547** [1513]. Persons who are deprived of the right to receive certain property, cannot be the lessees thereof either, not even with judicial authorization, nor can the administrators of property belonging to another be the lessees thereof without the express consent of the owner of the thing.

## CHAPTER IV.

### Of the Obligations of the Lessor.

**1548** [1514]. The lessor is bound to deliver the thing to the lessee with all the accessories appurtenant thereto at the time of the contract, in a good state of repair suitable for the purpose for which it has been leased, unless they agree that it is to be delivered in the condition in which it is. Such agreement is presumed when buildings in a state of ruin are leased, and when possession of the thing is taken without any repairs thereto being demanded.

**1549** [1515]. After the lessor delivers the thing, he is obliged to keep it in good condition and to maintain the lessee in the peaceful enjoyment thereof during the entire term of the lease, performing all acts necessary to this end, and refraining from preventing, diminishing, or creating obstacles in the way of the enjoyment of the lessee.

**1550** [1516]. The obligation to maintain the thing in good condition, consists in making the repairs made necessary by any deterioration of the thing due to a fortuitous event or *force majeure*, or that due to the inherent quality of the thing, a vice or defect thereof, whatever it is, or that due to the natural effect of the use or enjoyment stipulated, or that due to the fault of the lessor, his agents or employees.

**1551** [1517]. The deterioration of the thing due to the acts of third persons, even though prompted by enmity or odium against the lessee, is a fortuitous event, to be borne by the lessor.

**1552** [1518]. When the lessor fails to make, or delays making the repairs or works incumbent upon him, the lessee is authorized to withhold the part of the price corresponding to the cost of the repairs or works, and when the necessity therefor is urgent, he may execute them for the account of the lessor.

**1553** [1519]. When the lessor is willing to make the repairs chargeable to him, and they interrupt the use or enjoyment stipulated, in whole or in part, or cause great inconvenience to the lessee, the latter may demand, as the case may be, either the suspension of the lease, or a reduction therein in proportion to the time required to make the repairs. If the lessor does not agree either to the suspension of the payment of the price, nor to the reduction thereof, the lessee may return the thing, the contract being dissolved.

**1554** [1520]. The lessee also has the rights of the preceding article, when the lessor is obliged to tolerate on the part of the adjoining owner, work on the party-walls, or the rebuilding thereof, rendering useless for a considerable time part of the thing leased.

**1555** [1521]. Whenever the thing leased is totally destroyed by a fortuitous event during the term of the contract, the contract is rescinded. If a part thereof only is destroyed, the lessee may demand a reduction in the price or the rescission of the contract, according to the extent of the part destroyed. If the thing has been merely damaged, the contract shall continue in force, but the lessor is obliged to repair the damage and place the thing in good condition.

**1556** [1522]. When by reason of a fortuitous event or *force majeure*, the lessee is obliged to discontinue the use or enjoyment of the thing, or such thing can no longer be applied to the object of the agreement, he may demand either the rescission of the contract, or the suspension of the payment of the lease, for such time as he cannot use or enjoy the thing.



But if the fortuitous event does not affect the thing itself, his obligations continue as theretofore.

**1557** [1523]. The lessor cannot change the form of the thing leased, even when the changes he makes do not cause any damage whatsoever to the lessee; but he may make changes in the accessories of the thing, provided he does not cause any damage to the lessee.

**1558** [1524]. If the lessor desires to make improvements or add works to the thing leased, other than repairs, or if he has made them against the will of the lessee, the latter may object to their being made, or demand the demolition thereof, or return the thing and demand indemnity for damages.

**1559** [1525]. The lessor is answerable for the grave vices or defects of the thing leased which prevent the use thereof, even though he did not know of their existence, or even though they arose during the term of the lease, and the lessee may demand a reduction of the price, or the rescission of the contract, unless he was aware of the vices or defects of the thing.

**1560** [1526]. The lessor is likewise answerable for the obstacles to the use or enjoyment of the thing leased by the lessee, even though due to *force majeure*, or the actions of third persons, within the limits of their rights.

**1561** [1527]. The lessor is obliged to defend, and in a proper case to indemnify the lessee, when he is sued by third persons claiming, as to the thing leased, rights of ownership or of servitude or rights to the use or enjoyment of the thing.

**1562** [1528]. The lessor is not bound to warrant the lessee against acts of violence of third persons, who do not claim ownership, servitude, use or enjoyment of the thing. The lessee has no right of action other than against the authors of the acts, and even when the latter are insolvent, has no right of action against the lessor.

**1563** [1529]. When the acts of violence of the third persons assume the character of *force majeure*, such as devastations of war, armed bands, etc., then the provisions of Art. 1551 [1517] shall apply.

**1564** [1530]. The lessee is obliged to inform the lessor, as soon as possible, of any usurpation, or occurrence prejudicial

to his right, as also of any action directed against the ownership, use or enjoyment of the thing, under the penalty of being liable for the damages, and forfeiture of any guarantee given by the lessor.

**1565** [1531]. If the lessor is defeated in court as to a part of the thing leased, the lessee may demand either a reduction in the price, or the rescission of the contract, if the part of which he is deprived constitutes a principal part of the thing, or of the object of the lease, and the damages sustained by him.

**1566** [1532]. The right of the lessee to recover damages in the case of the preceding article does not lie if at the time of entering into the contract he was aware of the danger of the eviction.<sup>39</sup>

**1567** [1533]. In the absence of any prohibition in the contract, the lessee may, without the necessity of special authorization from the lessor, make any improvements to the thing leased he deems proper, for his use or comfort, provided he does not alter its form or has not been summoned to return the thing. After the execution of the contract, the lessor cannot forbid the lessee to make improvements.

**1568** [1534). In houses and urban estates, and in the buildings of rural estates, the tenant cannot construct any work which would impair the solidity of the building, or cause some inconvenience, such as breaking through main walls for the purpose of opening doors or windows. He may, nevertheless, remove or change interior divisions, open doors or windows in such divisions, or make similar works, provided that upon vacating the house, he restore it to the condition in which he agreed to return it or in which he received it, if the lessor should so require.

**1569** [1535]. When the lease is of lands in cities or rural communities, it is understood that the lease has been made with authorization to the lessee to build thereon, the necessary or useful improvements running for the account of the lessor.

**1570** [1536]. When the lease is of uncultivated lands, it is also understood that it has been made with authorization to

<sup>39</sup> See note to Art. 2123 [2089].

the lessee to do any work of cultivation thereon, or make rural improvements of any kind whatsoever.

**1571** [1537]. The lessee cannot make any improvements which alter the form of the thing, unless expressly authorized to make them by the contract, or unless the lessor has subsequently given him such authorization.

**1572** [1538]. When a general prohibition to make improvements is embodied in the contract, or a prohibition to make certain improvements, the lessee cannot in the former case make any improvements whatsoever, and in the latter he cannot make the prohibited improvements, unless the lessor authorizes him to do so subsequently.

**1573** [1539]. The improvements and expenditures made by the lessee are chargeable to the lessor in the following cases only:

1. When in the contract or subsequently, he authorized him to make the improvements and agreed to pay therefor, whether the lessee agreed to make them or not.

2. When he authorized him to make them, and after they were made he agreed to pay therefor.

3. When they were repairs or expenses chargeable to him, and the lessee made them on account of the urgent need therefor.

4. When they are necessary or useful and the contract is resolved without the fault of the lessee, even though he did not agree to pay them, nor give authority to make them.

5. When they are voluntary improvements, if the lease is canceled through his fault.

6. When the lease is for an indeterminate period, if he authorized him to make them and demanded the restitution of the thing, without the lessee having had an opportunity to enjoy them.

**1574** [1540]. The fact of the lessor having authorized the lessee to make the improvements or expenditures which the latter made, is not sufficient to compel the lessor to pay therefor, unless it expressly appears in addition hereto that he agreed to pay them, reserving the cases of the preceding article, numbers 4, 5 and 6.

This provision includes the premium of insurance of the thing leased paid by the lessee, unless it appears in an express manner that he agreed to insure it for the account of the lessor.

**1575 [1541].** If the lessor authorized the lessee to make improvements, in the contract or subsequently, without any further statement, it is understood that such authorization refers solely to the improvements which the lessee has a right to make without requiring special authorization.

**1576 [1542].** If improvements are authorized which the lessee does not have the right to make without special authorization, such improvements must be specifically stated. If improvements are authorized which the lessor agrees to pay for, the maximum amount which the lessee can expend must be stated as well as the rent or lease to be applied to the purpose.

If the preceding provisions are not observed, the authorization is considered as not written, if stipulated in the contract, and is void if stipulated separately.

**1577 [1543].** Authorizations to make improvements, under the obligation of the lessor to pay therefor, and under the obligation of the lessee to make them, can be proved by documentary evidence only.

**1578 [1544].** The repairs or expenditures chargeable to the lessor, are assumed to have been made by the lessee in case of urgency, when they could not be delayed without damage to the thing leased, and the lessee was unable to notify the lessor to make them or authorize him to make them. Expenditures of this character are also considered those which the lessee has made, such as the payment of the taxes upon the thing leased.

**1579 [1545].** All improvements made in cases of urgency, and all those included in the cases of Art. 1573 [1539], subdivisions 5 and 6, must be paid for by the lessor, notwithstanding a stipulation in the contract that the improvements were to accrue to the benefit of the thing leased, or that the lessee was not to be permitted to demand any indemnity whatsoever therefor.

ground of ordinary or extraordinary fortuitous events, which destroyed or injured the crops.

**1592** [1558]. The lessor may, as security for the payment of the price, retain all the existing fruits of the thing leased and all the objects with which it is furnished, equipped or supplied, belonging to the lessee. It is assumed that all those found on the estate leased belong to him, in the absence of proof to the contrary.

**1593** [1559]. If the lessee uses the thing leased for a purpose other than that to which it is destined by its nature or by the contract, or if on account of an abusive enjoyment he causes loss to the lessor, the latter may bring an action to recover damages, and according to the circumstances, the suppression of the causes of the loss, or the rescission of the lease.

**1594** [1560]. An abusive enjoyment on rural property is the tearing up of trees, the cutting of timber, unless for the purpose of procuring the wood necessary for the work of tilling the land or improving the estate, or to obtain fire wood or charcoal for the use of his house.

**1595** [1561]. He must maintain the thing in good condition and is answerable for any damage or deterioration caused through his fault or by the act of the members of his family who live with him, of his servants, laborers, guests or sublessees.

**1596** [1562]. The lessee does not maintain the thing in good condition:

1. Whenever it deteriorates through his fault or that of the persons mentioned in the preceding article, or when he abandons it without leaving any person to keep it in good condition, even though he do so on account of a personal necessity, but not if he does so for reasons arising out of the thing itself or out of the place where it may be located.

2. By adding noxious works to the thing leased, or such as change its destination, or by making, without authorization, improvements which alter its form, or which are prohibited in the contract.

3. By failing to make the improvements to which he bound himself.

**1597** [1563]. Whenever the thing leased deteriorates through the fault of the lessee or of the persons enumerated in Art. 1595 [1561], the lessor may compel him to make the necessary repairs, or dissolve the contract.

**1598** [1564]. If the lessee abandons the thing leased without leaving any person to act in his place, the lessor has the right to examine into the condition thereof and have recourse to the necessary judicial proceedings, the contract being dissolved upon his doing so.

**1599** [1565]. Whenever the lessee without authorization from the lessor, makes improvements which alter the form of the thing leased, or improvements prohibited by the contract, the lessor may prevent them; and if they have already been completed, he may either bring an action to obtain their demolition, or compel the lessee upon the termination of the lease, to return the thing in the state in which he received it.

**1600** [1566]. Whenever the lessee adds noxious works to the thing leased, or works which alter its destination, the lessor may exercise the same rights which are set forth in the preceding article, or bring an action for the resolution of the contract.

**1601** [1567]. If the lessee fails to make the improvements promised, without having received therefor any sum of money from the lessor or other advantage, the latter may bring an action to compel him to make them within a certain time, with the warning that if he fail to do so the contract will be cancelled; and if he has received a sum of money wherewith to make them, with the warning to return the sum received with interest, or pay the reduced rental.

**1602** [1568]. There is no fault on the part of the lessee if the total or partial loss of the thing leased, or its deterioration, or the impossibility to apply it to the purpose for which it is intended, was caused by a fortuitous event or *force majeure*.

**1603** [1569]. Nor is there any fault on the part of the lessee on account of the less or deterioration of the thing leased, when caused by its own quality, vice, or defect, or when it

was intended to extinguish itself progressively by the extraction of its products.

**1604** [1570]. When the accident due to *force majeure* which caused the loss or deterioration of the thing leased is not a matter of common knowledge, the burden of the proof of the fortuitous event is on the lessee. In the absence of proof, the loss or deterioration is chargeable to him.

**1605** [1571]. When the accident due to *force majeure* is a matter of common knowledge, or when such accident is proved, the burden of proof that there was fault on the part of the lessee, his agents, employees, assignees, sublessees, borrowers for use (*comodatarios*), or guests, is on the lessor.

**1606** [1572]. The provisions of the preceding articles apply in the event of the destruction of the thing leased by fire. The fire shall be considered a fortuitous event, unless the lessor or the person damaged proves that there was fault on the part of the persons enumerated in the preceding article.

**1607** [1573]. The lessee must repair those minor damages which are ordinarily caused by persons who occupy the building.

**1608** [1574]. Even when the contract states the time when the lessee is to make the payments, or when the time therefor with regard to the class of thing leased is governed by custom, he may set up against third persons obliged to respect the lease, the receipts for lease or rental which he has paid in advance, reserving the right of the person prejudiced, if such payment had not been made in good faith.

**1609** [1575]. It is presumed that the advance payment was not made in good faith, even though the lessee pleads the clause of his contract whereby he agreed to make such payment:

1. When the payments have been made for leases of longer terms than the lessor could grant.

2. If the lessee, notwithstanding a prohibition in the contract against subletting, has sublet the thing, and received advance payments.

3. In relation to the creditors of the lessor, if he made advance payments after the publication of his failure.

4. In relation to the mortgage creditors of the lessor, or of the persons to whom the immovable property leased had been awarded at a public sale or otherwise, if made without being obliged to do so by the contract.

5. In relation to the chirograph creditors<sup>40</sup> of the lessor, if he had made the payments after the attachment of the rental or lease price.

6. If not being obliged to do so under the contract, and knowing of the insolvency of the lessor, he made advance payments to him.

7. In relation to the grantees of the thing leased under voluntary alienations by the lessor, and in relation to the assignees of the lease or of the rental or lease price, by voluntary assignments on the part of the lessor, if it be proved that the lessee made them knowing or having reason to know of the alienation or assignment.

**1610** [1576]. The creditors of an insolvent lessee, or the administrators of the estate of a bankrupt lessee, do not have the right, under the pretext of fraud, to annul the advance payments of lease price or rentals. They can only demand the return of such payments in the event of the rescission of the contract.

**1611** [1577]. When the lease is for an indeterminate period, and notice is served on the lessee to vacate, the latter may demand indemnity for the improvements which he had been authorized to make, and of which he has not as yet had the enjoyment.

**1612** [1578]. When the thing leased is an immovable, the lessor may, even though the lease is secured, institute execution proceedings for the recovery of the lease price or rental, and apply for a writ of attachment of the property subject to the privilege<sup>41</sup> granted by this Code to the credit of the lessor.

**1613** [1579]. If the lessee fails to pay two consecutive installments of the lease price or rental, the lessor may bring

<sup>40</sup> See note to Art. 995 [961].

<sup>41</sup> See Art. 3909 [3875].



an action for the resolution of the contract, and to recover damages.

**1614** [1580]. The lessee shall not be adjudged to pay the lease price or rental, when he has improvements or expenditures to set off against it, even though the exact amount thereof is subject to liquidation.

**1615** [1581]. The right of the lessee to bring execution proceedings for the recovery of the lease price or rentals, and for the recovery of any other debt arising out of the lease, is likewise vested in his heirs, successors, or representatives, against the sub-lessee, his heirs, successors or representatives, without subjection to authorization from the lessor.

**1616** [1582]. The security or cautions<sup>42</sup> of the lease or sublease obligate the persons who furnished them, not only to the payment of the lease price or rental but also of all the other obligations of the contract, unless expressly limited to the payment of the lease price or rental.

## CHAPTER VI.

### Of the Assignment of a Lease and of Subleases.

**1617** [1583]. The lessee may sublet the thing leased, in whole or in part, or loan or assign it to another, if not forbidden to do so by the contract or the law; and this right passes to his heirs, successors, or representatives.

**1618** [1584]. The assignment consists solely of the transfer of the rights and obligations of the lessee, and the laws relating to the assignment of rights are applicable thereto.

**1619** [1585]. A sublease constitutes a new lease, and is governed by the laws relating to the contract of lease.

**1620** [1586]. The assignor does not enjoy for the price of the assignment the rights and privileges<sup>43</sup> of the lessor, in all the things brought into the estate leased.

<sup>42</sup> In the Civil Law, security given for the performance of anything. (Bouvier, Law Dict.)

<sup>43</sup> See Art. 3909 [3875].

**1621** [1587]. The assignee cannot compel the assignor to deliver the thing to him in good condition. He is obliged to receive it in the state in which it is at the moment of the assignment.

**1622** [1588]. The assignee or sub-lessee cannot refuse to receive the thing leased on the ground that the lessee is forbidden to assign or sublet it, if they entered into the contract with a knowledge of such prohibition. In such case the assignment or sublease produces its effects, if the lessor does not object, or until he does object.

**1623** [1589]. The assignee has a direct right of action against the lessor to compel him to perform all the obligations which he had contracted with the lessee; and he is directly obligated, with respect to the lessor, by the obligations arising out of the contract of lease.

**1624** [1590]. The sublessor enjoys, in consideration of the price of the sublease, the rights and privileges of the lessor, as to all the things brought upon the estate leased, and the sublessee may compel the sublessor to deliver the thing to him in good condition.

**1625** [1591]. The sublessee may compel the lessor directly to perform the obligations which said lessor has contracted in favor of the lessee.

**1626** [1592]. On the other hand, the original lessor has a direct action against the sublessee for the enforcement of the obligations arising out of the sublease.

**1627** [1593]. The original lessor has a right and privilege <sup>44</sup> over the things introduced into the estate by the sublessee; but he may exercise it only to the extent of the obligations incumbent upon the latter.

**1628** [1594]. The original lessor must admit the payments made to the lessee by the sublessee, for rentals due.

**1629** [1595]. The sublessee cannot set up against the original lessor the advance payments made by him, unless they were made under a clause of the sublease, or conform to the local usages.

<sup>44</sup>See Art. 3909 [3875].

**1630** [1596]. A lessee who sublets, or assigns his lease, cannot under any clause whatsoever release himself from his obligations to the lessor, without the consent of the latter.

**1631** [1597]. A prohibition to sublet implies a prohibition to assign the lease, and *vice versa*, a prohibition to assign a lease implies a prohibition to sublet.

**1632** [1598]. A clause to the effect that the lessee shall not be permitted to assign the lease or sublet without the consent of the lessor, does not prevent the lessee from assigning or subletting, if the proposed assignee or sublessee is solvent and has good credit.

**1633** [1599]. The effects of the assignment of a lease on the part of the lessee, and in relation to the lessor, are the following:

1. To transfer to the assignee all the rights of the lessee against the lessor, or only the part thereof coming under the assignment; but always subject to the condition that, if the assignee should bring an action against the lessor, he must prove that the assignor has been released from his obligations as a lessee, or himself offer to fulfill them.

2. All the obligations of the lessee to the lessor, or only those coming under the assignment, also pass to the assignee, without the assignor being released from his obligations to the lessee.

**1634** [1600]. The lessee, in relation to the sublessee, contracts the obligations and acquires the rights of the lessor; and the effects of the sublease are governed solely by the agreements between the lessee and sublessee, and not by the contract between the lessor and lessee.

**1635** [1601]. With relation to the lessor, the effects of the sublease are the following:

1. The obligations of the lessor to the lessee shall continue unchanged, as well as those of the lessee to the lessor, without the latter becoming subject to any direct obligation to the sublessee.

2. The sublessee becomes subject to the direct obligation of paying the lease price or rental when the lessee fails to pay

it, and when the payment is sued for; but only to the amount which he owes the lessee.

3. The sublessee cannot set up against the lessor the advance payments of the lease price or rental made by him to the lessee, unless he made them under a clause of his contract.

4. The sublessee becomes also subject to the direct obligation to indemnify the lessor for any damage he causes him in the use or enjoyment of the thing, or of that part thereof which was leased to him.

**1636** [1602]. If the lessee, notwithstanding the prohibition imposed in the contract against subletting, substitutes another person in the use or enjoyment of the thing, the lessor may stop such use or enjoyment and recover indemnity for the damage caused, or bring an action for the rescission of the contract, with indemnity for damages.

**1637** [1603]. The sublease and the assignment of a lease on the part of the lessee, shall always be considered to have been made subject to an implied clause that the assignee and sublessee shall use and enjoy the thing in accordance with the purpose for which it was delivered under the contract between the lessor and lessee, even though the latter has not so stipulated in his contract with the assignee or sublessee.

## CHAPTER VII.

### Of the Termination of Leases.

**1638** [1604]. A lease terminates:

1. When contracted for a certain period, upon the expiration of said period.
2. When contracted for an indeterminate period, whenever the parties desire to terminate it.
3. By the loss of the thing leased.
4. By the impossibility to apply the thing to the special purpose for which it was expressly leased.

5. On account of the redhibitory vices of the thing, already existing at the time of the contract or arising thereafter, unless such vices were apparent at the time of the contract, or the lessee was aware thereof, or should have been aware of the same.

6. By fortuitous events which have made it impossible to begin or continue the effects of the contract.

7. By all cases of fault on the part of the lessor or lessee which authorize either to rescind the contract.

**1639** [1605]. Redhibitory vices in urban estates, are present when the house is darkened on account of constructions on neighboring estates, or when it threatens to collapse.

**1640** [1606]. Upon the termination of the lease, even though it be on account of non-payment of the lease price or rental, the subleases the term of which have not as yet expired, are resolved, or may be resolved, without prejudice to the right of the sublessee to the indemnity to which he may be entitled from the lessee.

**1641** [1607]. The sublease is not resolved, however, when the lease terminates owing to confusion, that is to say, the merger in the same person of the quality of lessee and of owner or usufructuary.

**1642** [1608]. When the subleases have been resolved, the sublessees have the same rights of action against the lessee who sublet to them which the lessee has against the lessor.

**1643** [1609]. When the time of a lease executed for a stated term has terminated on account of the expiration of the period thereof, if the lessee does not return the thing leased, the lessor may at once bring an action against him to recover it, with damages<sup>45</sup> for the delay.

**1644** [1610]. When the lease has not been made for a stated term, the lessor cannot bring an action against the lessee to recover the thing leased, until after the following terms:

1. When the thing is a movable, until three days since service of notice of the termination of the hire have elapsed.

<sup>45</sup> *Pérdidas é intereses*. See Art. 1103 [1069].

2. When it is a house or estate, until forty days computed in the same manner have elapsed.

3. When it is a rural estate, or a commercial or industrial establishment, until three months, counted in the same manner, have elapsed.

4. When it is a rural estate containing an agricultural establishment, when one year, counted in the same manner, has elapsed.

5. When it is a tract of land on which there is no commercial, industrial or agricultural establishment, when six months, computed in the same manner, have elapsed.

**1645** [1611]. When the lease is for an indeterminate period, or when the term of the lease has expired, or when the lessee has the right to resolve it, if the lessee returns the thing leased and the lessor is not willing to receive it, he may deposit it with the court, and from the date of such deposit his liability for the lease price or rental terminates, reserving the right of the lessor to contest the deposit.

**1646** [1612]. The lessee may also deposit the movable thing hired with the court, if he ascertains that it does not belong to the lessor, or that it was stolen from its owner, or that its owner had lost it, with the previous intervention of the owner of the thing, or of the lessor.

**1647** [1613]. When the thing leased is undivided and the property of a number of co-owners, none of them is permitted, without the consent of the others, to bring an action for the restitution of the thing before the expiration of the term of the lease, whatever ground he should have therefor.

**1648** [1614]. When the same thing is leased to two or more solidary lessees, none of them can, without the consent of the others, return the thing before the expiration of the term of the lease.

**1649** [1615]. Upon the termination of the contract of lease, the lessee must return the thing leased as he received it, if a description of its condition had been made, excepting that which has been destroyed, or deteriorated by time or inevitable causes.

**1650** [1616]. When the lessee received the thing without any description of its condition, the presumption is that he received it in good condition in the absence of proof to the contrary.

**1651** [1617]. When a rural estate has been leased, with the work or breeding animals thereon, and no stipulation as to the mode of return had been embodied in the contract, all the breeding animals shall belong to the lessee with the obligation of returning the same number of head of the same qualities and ages.

**1652** [1618]. The lessee cannot retain the thing leased under the pretext that the lessor is indebted to him, not even as indemnity for improvements, provided the lessor deposit or give security for the payment thereof upon liquidation.

**1653** [1619]. Nor can the lessor abandon the thing leased in order to release himself from payment for the improvements and reimbursement of expenditures which he is obliged to pay.

**1654** [1620]. When the thing leased contains improvements for which the lessor is not required to pay, they shall be considered, whatever be their value, as accessories of the thing. The lessee cannot remove them if the removal thereof would cause some damage to the thing leased; or if, while not causing damage to the thing, it would not result in benefit thereto; or if the lessor should be willing to pay the amount of their value, if separated.

**1655** [1621]. With the exception of these cases, the lessee shall have the right to remove them, provided that after their removal he return the thing in the condition in which he agreed to return it, or in the condition in which he received it.

**1656** [1622]. If after the termination of the contract the lessee continues to use and enjoy the thing leased, it shall not be considered that an implied renewal of the lease has taken place, but a continuation of the lease which has terminated, under the same terms, until the lessor demands the return of the thing; and he may demand it at any time, whatever be the time the lessee has continued to use or enjoy the thing.

## CHAPTER VIII.

## Of the Hire of Services.

**1657** [1623]. A hire of services is a consensual contract, even though the service is to be rendered upon a thing which one of the parties is to deliver. It takes place when one of the parties obligates himself to render a service, and the other to pay him for such service a price in money. The effects of this contract are governed by the provisions of this Code relating to *Obligations to Do*.

**1658** [1624]. The service of persons of either sex who come to an agreement for domestic service, is governed by the municipal or police ordinances of each town. The relations between artisans and apprentices, and between teachers and pupils, are governed by special provisions. The service of transportation companies or agents, by land as well as by water, of persons as well as of things, are governed by the laws of the Code of Commerce and by those of this Code, as to their responsibility for the things delivered to them.

**1659** [1625]. A person who has brought up another person cannot be compelled to pay him any wages for services rendered, until he has attained the age of fifteen years. Nor shall tutors who have kept with them persons under fifteen years of age, because they could not procure a situation for them, be compelled to pay salaries.

**1660** [1626]. When the object of the hire is the rendition of impossible, unlawful, or immoral services, the person to whom such services are rendered shall not have a right to bring an action against the other party to compel him to render such services, nor to recover the price which he has paid.

**1661** [1627]. A person doing some work, or rendering some service to another, may bring an action to recover the price therefor, even though no price has been stipulated, provided such service or work is his profession or means of livelihood. In such case, it is understood that they agreed on the customary price, to be determined by arbitrators.



**1662** [1628]. When the service or work is not connected with the profession or means of livelihood of the person who renders or performs it, the provisions of the foregoing article are applicable only when, on account of the attendant circumstances, the intention of doing a favor to the person to whom the service was rendered is not presumed. This intention is presumed when the service was not solicited, or when the person rendering it lived in the house of the other party.

**1663** [1629]. A contract may be made for a job or the construction of a work, with the stipulation that the person doing it shall contribute thereto only his labor or his industry, or that he shall furnish the principal material also.

**1664** [1630]. A person who has agreed to contribute his labor or industry, cannot claim any compensation, if the work is destroyed by a fortuitous event before the delivery thereof, unless there has been delay in its acceptance, or the destruction was due to the bad quality of the materials, provided he notified the owner of such fact in due time. If the material was not suitable for the use to which it was to be put, the workman is liable for the damage, if he did not notify the owner of its unsuitability, if the work turned out badly, or happened to be destroyed on that account.

**1665** [1631]. The contractor is answerable for the work done by the persons whom he employs on the construction.

**1666** [1632]. In the absence of an agreement as to the mode of executing the work, and in the absence of measurements, plans, or instructions, the contractor must construct the work according to local customs, or the difference between the person hired and the employer must be decided, in accordance with the price stipulated.

**1667** [1633]. Even when the price of materials and labor increases in value, the person hired can under no pretext whatsoever demand an increase in the price, if the work has been contracted for a lump sum.

**1668** [1634]. When they have agreed that the work is to be done to the satisfaction of the owner or of some other person, its approval by experts is understood to be reserved.

**1669** [1635]. In the absence of an agreement as to when the work is to be concluded, it is understood that the contractor is to conclude it within a reasonably necessary time, according to the character of the work, and in such case the employer may demand that such time be fixed by the judge.

**1670** [1636]. The price of work must be paid on delivery, if no time for payment has been stipulated in the contract.

**1671** [1637]. A contract of hire terminates upon the conclusion of the work, or the resolution of the contract.

**1672** [1638]. The owner of the work may of his own accord discontinue the construction thereof, even though begun, upon indemnifying the builder for all his expenses, labor, and the profit which he could have made out of the contract.

**1673** [1639]. When the work was let out by the piece or measure, without any designation of the number of pieces, or the total measurement, the contract may be resolved by either party, upon conclusion of the parts designated, payment being made for the part concluded.

**1674** [1640]. The contract is also resolved by the death of the contractor; but not by the death of the employer. The employer must pay the heirs of the contractor, in proportion to the price stipulated, for the value of the part of the work done and for the materials prepared, if such materials can be utilized in the work.

**1675** [1641]. The heirs must continue the construction of the work, when the work does not call for special qualifications on the part of the contractor.

**1676** [1642]. The contract may be resolved by the employer, or by the contractor, whenever the latter becomes unable to do or conclude the work, In such case the contractor shall be paid for what he has done.

**1677** [1643]. The contract may be resolved by the employer, if the contractor disappears or becomes bankrupt.

**1678** [1644]. It may also be resolved when the employer or the owner of the work does not furnish in due time the materials promised, or does not make the payments agreed on.

**1679** [1645]. Persons who contribute their labor or material to a work let out for a lump sum, have no right of

action against the owner thereof, beyond the amount which he owes the contractor.

**1680** [1646]. After receipt of and payment for the work by the person who let it out, the builder thereof is answerable for its total or partial destruction, if due to a defect of construction, or to some defect of the soil, or to the bad quality of the materials, whether the builder furnished it or not, or whether he constructed the work on the land of the employer.

**1681** [1647]. Building contractors are answerable for any damage they cause neighbors by a failure to observe the municipal or police ordinances.

## TITLE VII. OF PARTNERSHIP.

### CHAPTER I.

#### Conditions Essential to the Existence of a Partnership.

**1682** [1648]. There is partnership when each of two or more persons have mutually obligated themselves to contribute something, for the purpose of obtaining a profit which can be estimated in money, to be divided among themselves, from the use they make of that which each has contributed.

**1683** [1649]. The prestations<sup>46</sup> to be contributed by the partners shall consist of obligations to give, or of obligations to do something.

A capitalist partner is one whose prestation consists of obligations to give; and an industrial partner, one whose prestation consists of obligations to do something.

By social capital, used in this Code, is meant the totality of the prestations which consist of obligations to give something.

**1684** [1650]. A partnership contract is void if any one of the contracting parties does not contribute to the partnership obligations to give or obligations to do something, and if

<sup>46</sup> See footnote on p. 93.

he contributes only his credit or influence, even though he obligate himself to share the losses, if there should be any.

**1685** [1651]. A partnership of all the present and future property of the partners, or of all the profits they may obtain, is void; but a partnership of all present property, duly described, may be entered into; and also a partnership of profits, if of certain and specified transactions.

**1686** [1652]. A partnership which gives to one of the partners all of the profits, or which relieves him entirely from contributing to the losses, or from contributing to the capital, or wherein it is provided that any one of the partners shall not participate in the profits, is void.

**1687** [1653]. The following stipulations are void:

1. That none of the partners can withdraw from the partnership, or be excluded therefrom, even though there be just cause therefor.

2. That any of the partners may withdraw what he has in the partnership, whenever he desires.

3. That the amounts contributed by the capitalist partner or partners are to be returned to them with a stated premium, or with their fruits, or with an additional amount, whether there be any profits or not.

4. To secure to the capitalist partner his capital or the eventual profits.

5. To stipulate in favor of the industrial partner a fixed compensation for his work, whether there be profits or not.

**1688** [1654]. The following stipulations are valid.

1. That none of the partners shall receive less than the others, even though his prestation to the partnership is equal or greater.

2. That any of the partners shall have an alternative right, either to a stated annual sum, or to a portion of the eventual profits.

3. That the totality of profits, and even of the prestations to the partnership, shall belong to the surviving partner or partners.

4. That upon the death of any of the partners, their heirs shall only be entitled to receive a specified sum as their

share of the profits, or that the surviving partner or partners may retain all of the partnership assets, upon paying them a stated amount.

5. That when the prestation of any of the partners consists of the use or enjoyment of a thing, the loss of the property of the partnership shall be borne solely by the other partners.

6. That some one of the partners shall not bear the losses in the same proportion that he participates in the profits.

## CHAPTER II.

### Of the Object of Partnership.

**1689** [1655]. A partnership must have a lawful object.

**1690** [1656]. Partners cannot require their co-partners to share with them what they have acquired by criminal or forbidden means, acting for the partnership or in its name.

**1691** [1657]. The loss occasioned by the *dolus* of any of the partners, even though the manager of the partnership, is not divisible among the partners, and is personal to the author of the *dolus* or forbidden act.

**1692** [1658]. A partner who has brought to the common stock the profits he has gained by fraudulent or prohibited means, cannot compel his co-partners to return what they have received.

**1693** [1659]. Partners who form unlawful partnerships have no right of action against each other for the division of the profits or losses, or the capital or things they contributed to the partnership, nor can they set up the existence of the partnership for the purpose of suing third persons.

**1694** [1660]. Third persons in good faith may set up against the partners the existence of the partnership, without the partners having the right to plead the nullity thereof. But third persons in bad faith, that is to say, those who knew the partnership to be unlawful, cannot set up against the partners the existence thereof, and the partners may plead the nullity of the partnership.

**1695 [1661].** The members of unlawful partnerships are solidarily liable for any damage arising out of the unlawful acts performed in common for the purpose of the partnership.

### CHAPTER III.

#### **Of the Form and Proof of the Existence of Partnerships.**

**1696 [1662].** A contract of partnership may be entered into verbally, or in writing, by a public instrument, or by a private instrument, or by correspondence. The proof thereof is subject to the provisions relating to juridical acts. The value of the contract, for the purpose of the legal assessment under the law, is the amount represented by the entire social fund.

**1697 [1663].** When the existence of the partnership cannot be proved, on account of the absence of an instrument, or for any other reason, the partners who have had a community of property or of interests, may set up against each other the existence of the partnership for the purpose of demanding the restitution of whatever they have contributed to the partnership, the liquidation of the transactions made in common, the partition of the profits and of everything acquired in common, and the defendant shall not be permitted to plead the nullity or non-existence of the partnership.

**1698 [1664].** In the case of the preceding article, the partners may sue third persons for the performance of the obligations contracted by them in favor of the partnership, and such third persons cannot plead that the partnership has never existed. Third persons may set up against the partners the existence of the partnership, but the partners cannot set up against them the non-existence thereof.

**1699 [1665].** In cases in which the right is granted to set up the existence of the partnership, it may be proved by the facts from which its existence results, even though an amount in excess of the legal assessment is involved, such facts being the following:

1. Letters signed by the partners, and written in their common interest.
2. Circulars published in the name of the partnership.
3. Any documents in which the subscribers have assumed the qualities of partners.
4. A judgment rendered in an action between the partners in their capacity as such.

**1700** [1666]. A judgment rendered in favor of third persons, declaring the existence of the partnership, does not entitle the partners to sue *inter se* and set up said judgment as proof of the existence of the partnership.

## CHAPTER IV.

### Of Partners.

**1701** [1667]. Partners are considered the persons who, as such, were parties to the original contract of partnership, and those who have joined the partnership subsequently, either under a clause of the contract, or under a subsequent contract with all the partners, or by admission of the managers having authority to admit them.

**1702** [1668]. A person who is only an ostensible partner on account of having merely loaned his name, is not considered a partner in relation to the real partners, even though the latter give him some interest; but he is so considered with relation to third persons having a right of action against the real partners, to recover what he has paid to the creditors of the partnership.

**1703** [1669]. A person who is a non-ostensible partner, is considered a partner with relation to the persons with whom he has entered into partnership; but not with relation to third persons, even though such persons are aware of the partnership contract.

**1704** [1670]. The heirs or legatees of partnership interests do not have the character of partners, unless all of the other

partners agree to the substitution; or unless the substitution had been stipulated with the deceased partner, and accepted by the heir.

**1705** [1671]. Nor do the persons to whom the partners assign their partnership interests, in whole or in part, have the character of partners, unless likewise all the other partners agree to the substitution; or unless the power to make the substitution had been reserved in the partnership contract.

**1706** [1672]. A majority of the partners cannot change the partnership contract as to the object and mode of the existence of the partnership, nor authorize acts opposed to the purpose of the partnership, or acts liable to destroy it. Changes of this character may be made only with the unanimous agreement of the partners.

**1707** [1673]. Partners are forbidden to assign their partnership interests, unless they reserved this power in the contract of partnership. If it had been agreed that the assignment thereof could be made to the other partners, or to strangers, if the partners did not accept it, the assigning partner is obliged to inform the partners of the price and all the conditions offered him.

**1708** [1674]. When any of the partners assigns his interest, notwithstanding a virtual or express prohibition in the contract of partnership, he does not thereby lose his character as a partner, and the assignment is not obligatory upon the partnership; but it is effective between the assignee and the assignor, the latter becoming the mandatary of the former.

**1709** [1675]. An assignee who has been admitted as a partner, is bound to the partnership, or to the partners and creditors of the partnership, in the same manner as the assigning partner, whatever the terms of the assignment may be.



## CHAPTER V.

## Of the Management of the Partnership.

**1710** [1676]. The power to manage the partnership is vested in all the partners, and it is held to be exercised by each of them, unless it appears that the partners had appointed one or more mandataries, whether partners or others, to conduct the management.

**1711** [1677]. When the mode of management has not been stipulated, whatever the partners do binds the partnership as if done by one of its mandataries; but each partner may oppose the operations of the others, before they have produced any legal effect.

Any partner may compel the other partners to share with him the necessary expenses for the preservation of the common things.

**1712** [1678]. The business of the partnership may be conducted under the name of one or more of the partners, with or without the addition of the word *company*.

**1713** [1679]. No partnership can conduct its business in the name of a person who is not a partner: but a partnership established without the territory of the Republic, may use in the Republic the name used there, even though not the name of the partners.

**1714** [1680]. The name of a partnership which has its relations in places outside of the territory of the Republic, may be continued by the persons who have succeeded to such business and by their heirs, with the knowledge of the persons, if living, whose names were used.

**1715** [1681]. The mandate to manage the partnership may be made a part of the original contract, or executed after the creation of the partnership. If the mandate has been given by a clause of the contract, it cannot be revoked without a legitimate cause, and the partner who has received it may, notwithstanding the objection of the other partners, perform all acts entering into the management of the common stock.

**1716** [1682]. There is a legitimate cause for the revocation of the mandate, if the managing partner, for some grave reason, ceases to be worthy of the confidence of his co-partners, or if he becomes subject to some impediment which prevents him from properly managing the business of the partnership.

**1717** [1683]. If the mandatary does not acknowledge as just the cause advanced by his co-partners for the revocation of his power, he shall retain his office until removed by a judicial decision.

**1718** [1684]. When there is danger in delay, the judge may order his removal as soon as proceedings are instituted, and appoint a partner or other person as provisional manager.

**1719** [1685]. The removal may be decreed on the petition of any of the partners, without subjection to the decision of the majority.

**1720** [1686]. The removal of the manager appointed in the contract of partnership entitles any of the partners to dissolve the partnership, and the manager removed is liable for any damages.<sup>47</sup>

**1721** [1687]. The resignation of the manager appointed in the contract of partnership, also entitles any of the partners to dissolve the partnership; and a manager who resigns without a just cause, is liable for the damages.<sup>47</sup>

**1722** [1688]. When the power to manage has been given by a subsequent agreement, or conferred by an article tacked on to the original contract, this power is revocable in the same manner as an ordinary mandate, but one or more of the partners cannot revoke it against the will of the majority.

**1723** [1689]. A manager appointed by agreement, or by an act subsequent to the contract, may renounce the mandate without any liability whatsoever, whether he has a good cause for doing so or not.

**1724** [1690]. The power to manage is revocable, even though given in the contract of partnership, when the manager or managers appointed are not partners; and the revocation in such case does not give any right to demand the dissolution of the partnership.

<sup>47</sup> *Pérdidas é intereses*. See Art. 1103 [1069].

**1725** [1691]. In the absence of an express stipulation, the extent of the powers of the managing partner, and the character of the acts which he is authorized to perform, are governed by the object of the partnership and the end for which it was entered into.

**1726** [1692]. When the management has been entrusted to two or more partners, without their duties having been determined, or without a stipulation that some of them are not to act without the others, each of them may perform all the acts of management separately; but any of them may oppose the operations of the other, before they have produced legal effects.

**1727** [1693]. When it has been stipulated that one of managing partners is not to act without the other, the concurrence of all of them is necessary to the validity of acts, and it is not permissible to plead the absence or inability of any of the partners to act, unless there is imminent danger of a grave or irreparable damage to the partnership.

**1728** [1694]. The management of the partnership is considered a general mandate, which comprises all the ordinary affairs thereof, with all of its consequences. Ordinary affairs are those for which the law does not require a special power of attorney: all other affairs are considered extraordinary.

**1729** [1695]. A general mandate does not give authority to make changes in the real property of the partnership, nor to modify the object of the partnership, whatever profit might result from such changes.

**1730** [1696]. A legal or conventional prohibition to the partners to interfere in the management of the partnership, does not prevent any of them from examining the condition of the partnership business, and demanding for this purpose the presentation of books, documents, and papers, and making such objections as they may see fit.

**1731** [1697]. When extraordinary affairs are involved, the manager or managers of the partnership, or any of the partners, when the partnership is under the management of all of them, cannot do anything before special powers of attor-

ney have been granted them. Decisions upon such powers shall be adopted by a majority of the partners.

**1732** [1698]. The provisions of the preceding article apply only to the acts of management which have not been forbidden in the contract of partnership, or in the mandate granting the power to manage. Acts forbidden by the contract cannot be performed except by the unanimous vote of the partners.

**1733** [1699]. Notwithstanding the resolution of the majority, any of the objecting partners may perform the act or do the business which has been disapproved, for his own account and risk, and any profits which he obtains shall also accrue to him.

**1734** [1700]. The managers of the partnership, and the partners who represent it in any act of management, have the same obligations and rights as a mandatary with respect to his principal, in the absence of any provision in this Title to the contrary.

## CHAPTER VI.

### Of the Obligations of the Partners with respect to the Partnership.

**1735** [1701]. The partners are answerable for the eviction<sup>48</sup> of the property they have contributed to the partnership, and for the redhibitory vices thereof.<sup>49</sup>

**1736** [1702]. The partnership has the ownership of the property which the partners have delivered to it in ownership, and upon the dissolution of the partnership, the partners are not entitled to demand the restitution of such property, even though it exist intact in the social mass.

**1737** [1703]. The ownership of the property contributed by the partners is considered to have been transferred to the

<sup>48</sup> See note to Art. 2123 [2089].

<sup>49</sup> See Art. 2198 [2164].

partnership, unless it appears in a manifest manner that the partners transferred to it solely the use or enjoyment thereof.

**1738** [1704]. The ownership of prestations of fungible things, and of things which are not fungible, which deteriorate with use; movables and immovables contributed to be sold for the account of the partnership, or appraised in the partnership contract, or in a document relating to the matter, is vested in the partnership.

**1739** [1705]. The prestation of a sum of money is merely for the use or enjoyment thereof, when the partnership consists of a capitalist partner, and of another merely industrial partner.

**1740** [1706]. When the prestation consists of the use or enjoyment of the property, the partner who made it continues to be the owner thereof, and the total or partial loss of such property shall be borne by him, if not chargeable to the partnership or to some of the partners; and upon the dissolution of the partnership he has the right to demand the return thereof in the condition in which it may be.

**1741** [1707]. When the prestation consists of credits, the partnership is considered after the tradition thereof as the assignee of the same, it being sufficient that the assignment be shown by the partnership contract. The prestation consists of the face value of the credits and the premiums accruing to the date of the assignment, in the absence of an express agreement that the collection shall run for the account of the partner assigning them. When there is this stipulation, the contribution consists of the amount which the partnership actually collects of the principal and premiums of the credits assigned.

**1742** [1708]. If the prestation consists of labor or industry, the right of action of the partnership against the partner who promised it is governed by the provisions relating to obligations to do something.

**1743** [1709]. If the industrial partner does not render the service promised, without any fault on his part, the partnership may be dissolved. If the service promised is interrupted without any fault on his part, the partners shall only

be entitled to demand a proportionate reduction in the profits. If he does not render the service through his fault, the other partners may dissolve the partnership or continue it, excluding the industrial partner.

**1744** [1710]. None of the partners can be obliged to make an additional prestation if not promised in the contract of partnership, even though a majority of the partners demand it in order to enlarge the business thereof; but when it is not possible to attain the object of the partnership without increasing the prestations, the partner who does not agree thereto may withdraw, and he must do so if his partners demand his withdrawal.

## CHAPTER VII.

### **Rights and Obligations of the Partnership with respect to Third Persons.**

**1745** [1711]. Third persons are considered, with relation to the partnership and to the partners, not only all persons who are not partners, but also the partners themselves, in their relations with the partnership, or *inter se*, when they do not spring from their character as partners, or as managers of the partnership.

**1746** [1712]. The debtors of the partnership are not the debtors of the partners, and they do not have the right to set off what they owe the partnership with their private credit against any of the partners, even though it be against the manager of the partnership.

**1747** [1713]. The creditors of the partnership are at the same time creditors of the partners. If they collect their credits out of the partnership property, the partnership does not have the right to set off what it owes them against what they owe the partners, even though such partners be the managers of the partnership. If they collect them out of the private property of any of the partners, said partner has the right to set off the debt of the partnership against

what they owe him, or against whatever they owe the partnership.

**1748** [1714]. In the event of proceedings of creditors against the property of the partnership, the creditors of the partnership shall be paid before the private creditors of the partners. In proceedings against the private property of the partners, by their private creditors and the creditors of the partnership, there shall be no preference whatsoever if the creditors are merely personal.

**1749** [1715]. Debts contracted by the partnership are only those contracted by its managers as such, indicating said capacity in any manner whatsoever, either by obligating themselves for the account of the partnership or for the partnership.

**1750** [1716]. In case of doubt as to whether the managers have obligated themselves or not in the name of the partnership, the presumption is that they obligated themselves in their own names. In case of doubt as to whether they obligated themselves or not within the limits of the mandate, the presumption is that they did obligate themselves within the limits of such powers.

**1751** [1717]. When the debts are contracted in the name of the partnership, beyond the powers of the mandate, and they are not ratified by the partnership, the obligation of the latter is only to the amount of the benefit received. The burden of the proof of the benefit which has accrued to the partnership is on the creditors.

**1752** [1718]. The provisions of the next preceding article do not prejudice creditors in good faith, on account of debts contracted on behalf of the partnership beyond the powers conferred by the mandate, or after the mandate had expired, or after any of the partners had been deprived of the right to exercise it.

**1753** [1719]. Good faith in the creditors is presumed, if the abuse of the power or the expiration of the mandate or the deprivation of the right to discharge it, result from stipulations which could not be known to the creditors, unless it is proved that they had due notice of such stipulations.

**1754** [1720]. The partnership is not answerable for the damages caused by its managers in the discharge of their functions, unless it has derived some benefit therefrom; and then the measure of its liability is governed by the benefit obtained.

## CHAPTER VIII.

### Of the Rights and Obligations of Partners *Inter Se*.

**1755** [1721]. A partner who fails to contribute to the partnership the sum of money promised by him, owes interest thereon from the date on which he should have done so, without the necessity of a judicial demand. If the prestation offered consists of things of a different kind, he must satisfy the damages.<sup>50</sup>

**1756** [1722]. A partner who takes money from the cash box for his own use owes interest to the partnership from the date he took it, and in addition indemnity for any damages the partnership sustains through such act.

**1757** [1723]. The partners have *inter se* the right and obligation to manage the partnership, if no manager has been appointed.

**1758** [1724]. They must devote to all of the business of the partnership the same care, and adopt the same measures which they would in their own.

**1759** [1725]. Each partner is answerable to the partnership for the loss and damage it has sustained through his fault, and cannot offset such damages against the profits which it has obtained by his industry or care in other matters.

**1760** [1726]. The partners have *inter se* the right and obligation to represent the partnership, when its interests are opposed to those of the manager; when an action has been brought against any of the partners, or against third persons and the manager is remiss in the defense of the partnership.

<sup>50</sup> *Pérdidas é intereses*. See Art. 1103 [1069].



In such case they may defend the partnership, and adopt the remedies which they could adopt in their own affairs.

**1761 [1727].** An industrial partner owes the partnership whatever he gains by the industry which he has contributed to the partnership.

**1762 [1728].** When a partner, with authority to manage, collects a demandable amount, which was due him privately from a person who owes the partnership some other amount which is also demandable, the amount collected must be applied to both credits in proportion to their amount, even though he has given a receipt on account of his private credit. But if he has given it on account of the credit of the partnership, the entire amount shall be applied thereto.

When the debtor, upon making the payment, has indicated the credit of the partner, as being more burdensome to him, the application shall be made to said credit.

**1763 [1729].** A partner who has collected his full share in a partnership credit, is obliged, if the debtor becomes insolvent, to pay the amount collected by him into the common fund, even though he has given a receipt for his share only.

**1764 [1730].** None of the partners can bring a third person into the partnership without the consent of his co-partners; but he may associate such person with him personally as to the interest which he has in the partnership.

**1765 [1731].** Each partner is entitled to reimbursement by the partnership of the sums advanced by him with its knowledge, on account of obligations contracted by him, in connection with the affairs of the partnership, as well as of the losses which they may have caused him. All of the partners are obliged to contribute to this indemnity in proportion to their interest in the partnership; and the share of the insolvent partners shall be divided in the same manner among all of them.

**1766 [1732].** The partners are not entitled to any indemnity whatsoever on account of losses sustained, when the management of the business of the partnership was merely an incidental matter.

**1767** [1733]. The partners enjoy *inter se* the benefit of competency as to their debts to the partnership; but not as to the debts against each other.

**1768** [1734]. No partner can be excluded from the partnership by the other partners, in the absence of a just cause therefor.

**1769** [1735]. There is just cause for the exclusion of a member from the partnership:

1. When he assigns his interest to others in violation of a prohibition in the contract.

2. When he does not perform some of his obligations to the partnership, whether by his fault or not.

3. When he becomes incapacitated in some manner.

4. When he loses the confidence of the other partners, on account of insolvency, flight, the commission of a crime, improper conduct, the provocation of discord among the partners, or other similar acts.

**1770** [1736]. Incapacity due to the bankruptcy of a partner is not a cause for his exclusion from the partnership if he is merely an industrial partner.

**1771** [1737]. When a woman who is a member of a partnership contracts marriage, she shall not be considered incapable, if authorized by the husband to continue in the partnership.

**1772** [1738]. The partners cannot without just cause withdraw from a partnership entered into for a limited period. There is just cause if the manager thereof has been removed from the partnership, or has resigned his position; and if there is ground for the exclusion of a partner, and it does not desire to exercise said right.

**1773** [1739]. Any of the partners may withdraw from a partnership entered into for an unlimited period, provided the withdrawal be not due to bad faith or be not untimely.

**1774** [1740]. The withdrawal is in bad faith when made with the intention of deriving exclusive benefit from some advantage or profit which should belong to the partnership. It is untimely, if it occurs at a time when the business which

constitutes the object of the partnership has not yet been consummated.

**1775 [1741].** A withdrawal in bad faith is void with respect to the partners. Whatever the person withdrawing gains in the business which he had in view at the time of his withdrawal, belongs to the partnership; but if he suffers a loss therein, the loss shall be borne by him alone. A partner who withdraws at an untimely period must pay the damages which his withdrawal causes the partnership.

**1776 [1742].** The exclusion or withdrawal of any of the partners produces the following effects:

1. As to concluded transactions, the partner who is excluded or withdraws shall only share in the profits obtained up to the day of his exclusion or withdrawal.

2. As to pending business, the partnership shall be continued with the excluded or withdrawing member until the conclusion of the transactions.

3. As to the liabilities of the partnership to the date of the exclusion or withdrawal, the creditors shall retain their rights against the partner who is excluded or withdraws in the same manner as against the partners who continue in the partnership, even though the latter have assumed the full payment; unless they expressly and in writing release the excluded or withdrawing member.

4. As to the liabilities of the partnership subsequent to the exclusion or withdrawal, the creditors shall have a right of action only against the partners who continue in the partnership, and not against the partner who is excluded or withdraws, unless they shall have contracted without knowing of the exclusion or withdrawal.

5. The exclusion or withdrawal does not prejudice the creditors on account of subsequent debts, and third persons in general, if it was not published, or if they did not have knowledge in due time by some other means of the exclusion or withdrawal.

**CHAPTER IX.****Rights and Obligations of Partners as to Third Persons.**

**1777** [1743]. The partners must be considered as if no partnership existed between them, as to their obligations with respect to third persons. Their capacity as partners can neither be set up against them by third persons, nor invoked by them against third persons.

**1778** [1744]. The obligations contracted by one of the partners in his personal name, do not give the third persons who have contracted with him any direct action against the other partners, even though the result of said obligations have accrued to their profit.

**1779** [1745]. When the obligation is indivisible, each of the co-partners is liable for the entire debt.

**1780** [1746]. A partner cannot, even though he states that he contracts for the account of the partnership, obligate his co-partners as to third persons, except by virtue and within the limits of the express or implied power which he has received, or which he is held to have received to such end.

**1781** [1747]. The partners are not obligated solidarily for the debts of the partnership, unless they have expressly so stipulated. The obligations contracted by all of the partners jointly, or by one of them, under a sufficient power of attorney, render each of the partners liable for an equal quota, and in this proportion only, even though their interests in the partnership are unequal, and even though the contract of partnership provides for payment in unequal quotas, and even though it be established that the creditor was aware of this stipulation.

**1782** [1748]. None of the partners, unless he has the management of the partnership, or unless he represents it in the cases designated heretofore, or unless specially authorized by the manager of the partnership, has the right to collect the debts due the partnership and sue the debtors of the partnership.

**1783** [1749]. The debtors of the partnership are not discharged if they should make payment to a partner not authorized to receive payment, even though they pay him only his share of the debt.

**1784** [1750]. When the liabilities of the partnership are collected out of the private property of the partners, the payment shall be divided among them in equal parts, without the creditors having the right to demand payment in any other manner, nor being obliged to receive payment in any other manner.

**1785** [1751]. When any of the partners, on account of insolvency, fails to pay his share of the debt against the partnership, the provisions of Article 1765 [1731] shall apply.

**1786** [1752]. When the partners have paid the debts against the partnership in full, or in equal or unequal parts, the division among them shall be made in proportion to their interest in the partnership, or in proportion to the extent of their participation in the profits and losses. The amount which any one of them has paid in excess, shall be repaid by the others.

**1787** [1753]. The provisions of the preceding articles relating to the payment of the debts of the partnership by the partners, apply only to creditors who are not partners.

The liabilities of the partnership as to the partners, not arising out of their character as partners, shall be paid by them in proportion to the amount of their prestation to the partnership, the creditor partner bearing his proportionate share.

**1788** [1754]. The private creditors of the partner have a right of action to recover their debts out of the property representing the prestation of the partner who is their debtor, only when the partnership has not acquired the ownership of such property, or some other real right therein.

**1789** [1755]. If the partnership has acquired the ownership of the property to which the preceding article applies, the creditors of the partner may collect the debts of the latter out of the profits which the annual or intermediate balances show in favor of the partner who is their debtor, if the latter had the right to withdraw them from the partnership.

**1790** [1756]. They may also collect them out of the eventual share which may fall to the partner who is their debtor in the partition of the partnership; but if they attach or cause to be sold at public sale or allotted to them the eventual share to which the partner may be entitled, they do not acquire the right to interfere in any manner in the business of the partnership, nor can they recover anything therefrom, until after its dissolution and partition.

**1791** [1757]. These provisions relating to the private creditors of the partners are applicable, without any difference whatsoever, with respect to the partners who are private creditors of other partners, and with respect to the creditors or another partnership of which the partner is a member in co-partnership with other persons.

## CHAPTER X.

### Of the Dissolution of the Partnership.

**1792** [1758]. A partnership is dissolved, when it consists of two persons, by the death of one of them; but not when it consists of a greater number of persons.

**1793** [1759]. A partnership may be dissolved at the request of any of the partners, when the manager appointed in the contract dies, or the partner who contributes his industry, or any partner who is of such personal importance that his absence would render it probable that the partnership could not be continued successfully.

**1794** [1760]. When the partnership is continued after the death of one of the partners, the partition with his heirs shall be determined as of the day of the death of the partner, and the heirs of such partner shall not participate in the subsequent rights and obligations except in so far as a necessary consequence of transactions undertaken before the death of the partner whom they succeed.

**1795** [1761]. The same provisions shall be observed even when it has been agreed in the contract of partnership that

the partnership is to continue with the heirs, unless the heirs and the other partners agree among themselves to continue the partnership.

**1796** [1762]. The pending business of the partnership shall be continued with the heirs of the deceased partner.

**1797** [1763]. When the managers are unaware of the death of one of the partners, the transactions made are binding upon the heirs of the deceased partner.

**1798** [1764]. A partnership terminates upon the expiration of the term for which it was entered into, or upon the fulfillment of the condition to which its duration was subject, even though the business which constituted the object thereof is not concluded.

**1799** [1765]. An implied term of limited duration produces the effect of an explicit term.

**1800** [1766]. Upon the expiration of the term for which the partnership was entered into, it may be continued without the necessity of a new written contract, and its existence may be proved by its open action in matters of public knowledge.

**1801** [1767]. A partnership entered into for an unlimited period terminates when any of the partners demand its dissolution, and the other partners do not desire to continue in partnership.

**1802** [1768]. With relation to third persons, a partnership for an uncertain term is considered to have terminated only when its dissolution is made public, or notice of its dissolution is given to the persons who have business with the partnership.

**1803** [1769]. A partnership may be dissolved by the separation of one of the partners by reason of his exclusion from the partnership, his withdrawal, actual abandonment, or subsequent incapacity.

**1804** [1770]. When any of the partners becomes incapacitated, his representative shall not have the right to demand the dissolution of the partnership, nor to withdraw therefrom, nor to continue it, if he has not been expressly authorized therefor by a judge of competent jurisdiction.

**1805** [1771]. A partnership terminates by the total loss of the social capital<sup>51</sup> or the loss of a part thereof, rendering it impossible to attain the object for which it was entered into.

**1806** [1772]. A partnership terminates also upon the loss of the property or of the use of the thing which constituted its operating fund, or when so material a portion thereof is lost that without it, the partnership is unable to carry out the purpose for which it was entered into.

**1807** [1773]. When for any reason whatsoever the prestation promised by one of the partners is not carried out, the partnership shall be dissolved unless all of the other partners desire to continue it, with the exclusion of the partner who failed to make the prestation which he had engaged to make.

**1808** [1774]. A partnership is dissolved when on account of a cause having its origin in the partners, or in some other outside cause, such as war, it is unable to continue the business for which it was formed.

**1809** [1775]. A partnership is dissolved by a decree of dissolution which has acquired the force of *res judicata*.

**1810** [1776]. A decree dissolving a partnership has a retroactive effect to the day on which the cause of the dissolution arose.

## CHAPTER XI.

### Of the Liquidation of Partnership—And of the Partition of the Partnership Assets.

**1811** [1777]. The provisions of the Code of Commerce relating to the liquidation of commercial partnerships shall be observed in the liquidation of a partnership.

**1812** [1778]. The profits and losses shall be divided as agreed. When only the share of each partner in the profits has been stipulated, his share of the losses shall be the same. In the absence of an agreement, the share of each partner in

<sup>51</sup> See Art. 1683 [1649].



the profits and losses shall be in proportion to his contribution to the partnership.

**1813** [1779]. When the industrial partner has agreed with the other partners to share the profits or losses, it is understood that his loss is represented only by the industry he has contributed.

**1814** [1780]. When there are two or more partners who have contributed equally to the partnership, the share of the industrial partner in the profits shall be equal to that of the other partners, in the absence of an agreement to the contrary.

**1815** [1781]. When the prestation of the capitalist partners is of unequal parts, the share in the profits of the industrial partner shall be fixed by arbitrators, if the partners do not agree as to the amount thereof.

**1816** [1782]. When the industrial partner has also contributed capital, and the amount of the capital contributed by him is less than that contributed by the capitalist partners, the division shall be made in equal parts.

**1817** [1783]. When the amount of the capital contributed by the industrial partner is equal or greater than that contributed by the capitalist partners, the division shall be made in proportion to the amount of the capitals, adding to the capital of the industrial partner an amount equal to that of the capital of the capitalist partner or partners.

**1818** [1784]. When the amounts contributed by the capitalist partners are unequal, and the capital of the industrial partner is equal to or greater than the smaller of the capitals of the capitalist partners, the division shall be made by adding to the capital of the industrial partner an amount equal to the average of the capitals of the capitalist partners.

**1819** [1785]. When all of the partners are industrial, and have also contributed capital, the division shall be made equally, whether the capitals contributed are equal or not.

**1820** [1786]. When the prestation of the partners consists of movables or immovables to be sold for the account of the partnership, they are entitled to receive only the price for which the thing was sold. If it has not been sold by the

partnership, they are entitled to receive the amount at which the thing was valued at the time they delivered it to the partnership.

**1821** [1787]. If the movable or real property had been given a value in the contract of partnership, they are entitled to the value stated, whether it be worth more or less at the time of the dissolution of the partnership.

**1822** [1788]. In the division of the partnership, the provisions of Book 4 of this Code, on the division of inheritances, shall be observed in so far as applicable, in the absence of provisions in this Title to the contrary.

## TITLE VIII. OF DONATIONS.

**1823** [1789]. There is a donation when a person by an act *inter vivos*, transfers the ownership of a thing to another gratuitously of his own free will.

**1824** [1790]. When any person promises property gratuitously, under the condition that the promise is not to produce any effect until after his death, such a declaration of will is void as a contract, and is valid only as a testament, if made with the formalities of such juridical acts.

**1825** [1791]. The following are not donations:

1. The repudiation of an inheritance or legacy, with the intention of benefiting a third person.

2. The release of a mortgage, or the security of an unpaid debt, even when the debtor is insolvent.

3. The failure to perform a condition to which an eventual right is subject, even when the purpose of the omission is to benefit another.

4. A wilful omission for the purpose of forfeiting a servitude by nonuser thereof.

5. A failure to interrupt prescription in order to favor the owner.

6. The payment of what is not due, with the intention of benefiting the alleged creditor.

7. Gratuitous personal service, for which the person rendering it usually makes a charge.

8. All those acts whereby things are delivered or received gratuitously; but not for the purpose of transferring or acquiring the ownership thereof.

**1826** [1792]. In order for a donation to produce legal effects, it must be accepted by the donee, expressly or impliedly, and he must receive the thing donated.

**1827** [1793]. The donor may revoke the donation before its acceptance, expressly or impliedly, by selling, mortgaging, or giving to others the things comprised in the donation.

**1828** [1794]. When the donation is made to a number of persons separately, it is essential that it be accepted by each of the donees; and it produces its effects only with respect to the parties who have accepted it. When made to a number of persons solidarily, the acceptance by one or more of the donees applies to the entire donation. But if the acceptance by one or more of them becomes impossible, either by their death or revocation by the donor with regard to them, the entire donation shall go to those who have accepted it.

**1829** [1795]. If the donor dies before the donee has accepted the donation, the latter may nevertheless accept it, and the heirs of the donor are obliged to deliver the thing given.

**1830** [1796]. If the donee dies before accepting the donation, it is void, and his heirs can not demand anything of the donor.

**1831** [1797]. No one can accept donations, except in person or through a person who holds his special power of attorney to accept donations for him or a general power of attorney to administer his property, or through his legal representative.

**1832** [1798]. When the donation is made to two or more beneficiaries jointly, none of them shall enjoy the right of accretion, unless the donor has expressly conferred it.

## CHAPTER I.

**Of the Things which can be Donated—and Subject to what Conditions.**

**1833** [1799]. Things which can be sold can be donated.

**1834** [1800]. Donations can comprise only the present property of the donor, and if they also include future property, they are void as to the latter. Donations of all present property are valid if the donors reserve the usufruct, or an adequate amount to provide for their needs, and reserving the rights of their creditors and of their heirs, descendants, or legitimate ascendants.

**1835** [1801]. The donor may reserve for himself the usufruct of the property donated, or dispose thereof in favor of a third person.

**1836** [1802]. The donor may make the donation subject to the conditions he deems fit, provided they are possible and lawful. He is not permitted, however, under penalty of the nullity of the donation, to subordinate it to a suspensive or resolutive condition, which leaves him directly or indirectly the power to revoke it, or to neutralize or restrict its effects.

**1837** [1803]. No donations *mortis causae* are recognized other than those made under the following conditions:

1. That the donee shall return the property donated if the donor should not die in an anticipated casualty.

2. That the things donated shall revert to the donor, if he should survive the donee.

## CHAPTER II.

**Of the Persons who can Make and Accept Donations.**

**1838** [1804]. Persons who can enter into contracts have the capacity to make and accept donations, excepting the cases in which the laws expressly provide the contrary.

**1839** [1805]. The father and the mother, or both jointly, may make donations to their children of whatever age. When it is not stated to what account the donation is to be imputed, it is understood that it is made as an advancement on the *légitime*.

**1840** [1806]. No donation can be made to a person who does not have a civil or natural existence. It may, nevertheless, be made to corporations which do not have the character of juristic persons, when made for the purpose of founding them, and afterwards applying for the proper authorization.

**1841** [1807]. The following cannot make donations:

1. The spouses to each other, during the marriage, nor one of the spouses to the children which the other spouse has from another marriage, or to the persons of whom the other is the presumptive heir at the time of the donation.

2. The husband, without the consent of the wife, or supplementary authorization from the judge, of the real property of the marriage.

3. Parents, of the property of the children who are under their paternal power, without express judicial authorization.

4. Tutors, of the property of their wards, except in the cases designated in subdivision 5 of Article 484 [450].

5. Curators, of the property entrusted to their administration.

6. Mandataries, without a special power of attorney covering the case, containing a description of the specific property which they may donate.

7. Children subject to the paternal power, without the permission of their parents. They may, nevertheless, donate what they acquire in the practice of a profession or industry.

**1842** [1808]. The following cannot accept donations:

1. A married woman, without the permission of the husband or of the judge.

2. Tutors, on behalf of their wards, without express authorization from the judge.

3. Curators, on behalf of the persons in their charge, without judicial authorization.

4. Tutors and curators, of the property of the persons they have had under their charge, before the rendition of accounts, and the payment of the balance appearing against them.

5. Mandataries, without a special power of attorney covering the case, or a general power of attorney to accept donations.

**1843** [1809]. The capacity of the donor must be judged with respect to the moment when the donation was promised or the thing delivered. The capacity of the donee must be judged as to the moment when the donation was accepted. If the donation is subject to a suspensive condition, in relation to the day on which the condition is fulfilled.

### CHAPTER III.

#### Of the Forms of Donations.

**1844** [1810]. The following must be made before a notary public, in the usual form of contracts, and in the absence of a notary public, before the local judge and two witnesses, under the penalty of nullity: }

1. Donations of immovable property.
2. Remuneratory donations.
3. Donations subject to a charge.
4. Donations by one spouse to the other to take effect after death.
5. Donations of periodical or life prestations.<sup>52</sup>

**1845** [1811]. The donations enumerated in the preceding article must be accepted by the donee in the same instrument. When he is absent, by another instrument of acceptance.

**1846** [1812]. The donations enumerated shall not be considered proved without the production of the respective instrument in which they have been made.

**1847** [1813]. In all other cases, if the delivery of the property donated is sought in an action, the donation, of

<sup>52</sup> See note to Art. 1683 [1649].

whatever value, shall not be considered proved, except by a public or private instrument, or by the judicial confession of the donor.

**1848** [1814]. A public instrument is not sufficient proof of the donation, if the acceptance thereof by the donee is not proved by the means indicated, excepting a case in which the donation has been made by reason of marriage, which is presumed to have been accepted when the marriage is celebrated.

**1849** [1815]. The donation of movable things or of instruments payable to bearer may be made without a written instrument, by the mere delivery of the thing or of the instrument to the donee.

**1850** [1816]. In order for manual donations to be valid, it is necessary that they have the essential elements of a contract, and that the tradition which constitutes them be in itself a real tradition.

**1851** [1817]. If the person who transferred the thing alleges that the possessor thereof does not hold it as a donation, but as a deposit, loan, etc., he must prove that the donation was never made. Any means of proof is admissible in such case.

**1852** [1818]. A donation is not presumed except in the following cases:

1. When a thing has been given to a person to whom there is some duty to aid.
2. When made to a brother or descendant of either.
3. When things of little value have been given poor persons.
4. When made to charitable institutions.

## CHAPTER IV.

### Of Mutual Donations.

**1853** [1819]. Mutual donations are those which two or more persons make to each other in one and the same instrument.

**1854** [1820]. Mutual donations are not permitted between spouses.

**1855** [1821]. The annulment of a donation on account of a vice in the form or in the value of the thing donated, or on account of the incapacity of one of the donors, carries with it the nullity of the donation made by the other party; but the revocation of one of the donations by reason of ingratitude, or a failure to comply with the conditions imposed, does not carry with it the nullity of the other.

## CHAPTER V.

### Of Remuneratory Donations.

**1856** [1822]. Remuneratory donations are those which are made as compensation for services rendered to the donor by the donee, the value of which can be estimated in money, and for which the donee could sue the donor for payment.

**1857** [1823]. If the instrument whereby the donation is made does not specifically show what it is intended to remunerate, the contract is considered a gratuitous donation.

**1858** [1824]. Donations made on account of a moral duty of gratitude, for services which cannot be made the basis of an action for the recovery of the value thereof in money, even though called remuneratory, must be considered gratuitous donations.

**1859** [1825]. Remuneratory donations must be considered as acts under an onerous title, provided they do not exceed an equitable remuneration for services received.

## CHAPTER VI.

### Donations Subject to Charges.

**1860** [1826]. A donation may be made subject to charges in the interest of the donor, or of a third person, whether



the charge relate to the use or destination of the object donated or consist of a prestation the performance of which has been imposed on the donee.

**1861** [1827]. Donations subject to charges which can be estimated in money, are governed by the rules relating to acts under an onerous title, as to the portion of the property donated, the value of which is represented or absorbed by the charges; and by the rules relating to dispositions under a gratuitous title, as to the excess of the value of the property, over and above the charges.

**1862** [1828]. When the amount of the charges is more or less equal to the value of the objects transferred by the donation, the donation is not subject to any of the conditions of gratuitous donations.

**1863** [1829]. The third persons for whose benefit the donee has been charged with prestations the value of which can be estimated in money, have a right of action against him to compel him to perform such prestations; but the donor and his heirs have no right of action as to the charges established in favor of third persons.

## CHAPTER VII.

### Of Inofficious Donations.

**1864** [1830]. An inofficious donation is considered one the value of which exceeds that of which the donor could dispose; and in this regard the provisions contained in Book 4 of this Code shall be observed.

**1865** [1831]. If the inventory of the property of a deceased donor shows that the donations he had made were inofficious, his necessary heirs may bring an action to have them reduced in an amount sufficient to permit their *légitimes* to be covered.

**1866** [1832]. An action for the reduction of donations may be brought only:

1. By heirs who are descendants or ascendants of the donor, who were heirs at the time of the donation.

2. If the donations are gratuitous, and not if remuneratory or subject to charges, except in so far as they may have been gratuitous.

### CHAPTER VIII.

#### Of the Rights and Obligations of the Donor and the Donee.

**1867** [1833]. A donor who has not made tradition of the thing donated, is obliged to deliver it to the donee with the fruits thereof since delay has begun to run against him, but he shall not, however, be considered a possessor in bad faith.

**1868** [1834]. Aside from the real right of action which may, in a proper case, lie in behalf of the donee as the owner of the objects donated, he always has a personal right of action against the donor and his heirs, to compel them to carry out the donation.

**1869** [1835]. The donor is not answerable for the eviction and redhibitory vices of the thing donated, except in the cases enumerated in the Titles *Of Eviction* and *Of Redhibitory Vices*.

**1870** [1836]. If the property donated has been destroyed through the fault of the donor or of his heirs, or after delay in the delivery thereof has begun to run, the donee has a right to demand an amount equal to the value thereof.

**1871** [1837]. When the donation is not subject to a charge, the donee is obliged to furnish support to the donor who has no means of subsistence; but he may release himself of this obligation by returning the property donated, or an amount equal to the value thereof, if he has alienated it.

**1872** [1838]. The donee must fulfill the charges which have been imposed upon him in the interest of the donor or third persons by the act of donation.

**1873 [1835].** The donee is not obliged to pay the debts of the donor, if he has not obligated himself to do so, even when the donation consists of a specified part of the property of the donor.

**1874 [1840].** When the donation consists of a specified part of the present property of the donor, the latter may, before making the donation, retain a sufficient amount to pay his debts, in the proportion of the property donated and the property remaining to him, to the debts he had the day of the donation.

## CHAPTER IX.

### Of the Reversion of Donations.

**1875 [1841].** The donor may reserve to himself the reversion of the things donated, in the event of the death of the donee, or of the donee and his heirs.

**1876 [1842].** A conditional reversion cannot be stipulated except for the sole benefit of the donor. If it has been stipulated copulatively in favor of the donor and his heirs, or of a third person, the clause shall be considered as not written with respect to the heirs and third person.

**1877 [1843].** The right of reversion does not lie, whatever be the character of the donation and the relations between the parties, unless expressly reserved by the donor.

**1878 [1844].** When the right of reversion has been stipulated to take effect in the event of the death of the donee before the donor, the reversion takes place upon the death of the donee, even though he be survived by his children. If the right of reversion has been reserved to take effect in case of the death of the donee, and of his children or descendants, the reservation does not begin as to the donor, until the death of all the children or descendants of the donee. But if the right of reversion has been established to take effect in the event of the death of the donee without children, the

existence of the children at the time of the death of the donee extinguishes said right, which does not revive even in the case of the death of such children before the donor.

**1879** [1845]. The donor may, before the arrival of the time for the reversion, waive the exercise of this right.

**1880** [1846]. The consent of the donor for the sale of the property which constitutes the donation, carries with it the waiver of the right of reversion not only with respect to the purchaser, but also with respect to the donee. But the consent of the donor to the constitution of a mortgage by the donee, does not imply a waiver of the right of reversion, except in favor of the mortgagee.

**1881** [1847]. The reversion has a retroactive effect. It avoids the alienation by the donee or his children, of the things donated, and the property donated reverts to the donor free from all charges or mortgages, both with respect to the donee, as with respect to the third grantees thereof.

## CHAPTER X.

### Of the Revocation of Donations.

**1882** [1848]. A donation which has been accepted may be revoked only in the cases of the following articles.

**1883** [1849]. When the donee has been tardy with regard to the execution of the charges or conditions subject to which the donation was made, the donor has a right of action to demand the revocation of the donation.

**1884** [1850]. The donor may bring an action for the revocation of the donation on account of a failure to fulfill the obligations imposed upon the donee, whatever be the cause of the non-execution of these obligations, and even though their performance has become impossible, as a consequence of circumstances entirely beyond the control of the donee, unless the impossibility arose before delay had begun to run against him.

**1885** [1851]. The revocation on account of the non-fulfillment of the conditions or charges relates solely to the donee, and does not prejudice the third persons for whose benefit the conditions or charges have been stipulated by the donor.

**1886** [1852]. The right to bring an action for the revocation of a donation on account of the non-fulfillment of the charges imposed on the donee, is vested only in the donor and his heirs, whether the charges are imposed in the interest of the donor or in the interest of third persons, and whether they consist of prestations which can be estimated in money or not.

**1887** [1853]. The third persons for whose benefit the charges have been imposed, have a personal right of action only against the donee to compel him to fulfill them.

**1888** [1854]. The donee is answerable only with the thing donated for the fulfillment of the charges, and is not personally bound with his property. He may release himself from the fulfillment of the charges by relinquishing the thing donated, and if such thing is destroyed by a fortuitous event, his obligation is discharged.

**1889** [1855]. When the donation has been of immovable property, and the charges imposed by the donor are set forth in the public instrument, the revocation of the donation avoids the conveyances, servitudes, and mortgages made and constituted by the donee.

**1890** [1856]. When the donation has been of movable property, its revocation carries with it the annulment of the grant made by the donee, if the person who acquired the property donated was aware of the charges imposed and knew that they had not been fulfilled.

**1891** [1857]. The third persons who have acquired the property donated may prevent the effects of the revocation by offering to perform the obligations imposed on the donee, if it is not essential that the charges be fulfilled personally by him.

**1892** [1858]. Donations may also be revoked on account of ingratitude on the part of the donee in the three following cases:

• 1. When the donee has made an attempt on the life of the donor.

2. When he has committed grave injuries<sup>53</sup> against him, in his person or honor.

3. When he has refused him support.

**1893** [1859]. The donee may be held to have made an attempt on the life of the donor, even though he has not been punished for the act, and even though his acts do not partake of the character of an attempt according to the criminal law. It shall be sufficient that he have manifested by such acts in an unquestionable manner the intention of killing the donor.

**1894** [1860]. Grave crimes against the property of the donor may, as with crimes against his person, be a cause for the revocation of the donation.

**1895** [1861]. In order that the acts of the donee against the person and property of the donor may be a cause for the revocation of the donation, they must be morally chargeable to the donee: but his minority cannot excuse him, if wilfully and with sufficient understanding he has been guilty of acts of ingratitude against the donor.

**1896** [1862]. The revocation of a donation lies also on the ground of ingratitude, when the donee has failed to furnish support to the donor, if the latter has no parents or relatives of whom he has the right to demand it, or if they are not in a position to furnish him support.

**1897** [1863]. Onerous donations, as well as remuneratory donations, may be revoked for the same causes as gratuitous donations, to the extent they partake of the character of gratuitous donations.

**1898** [1864]. An action for the revocation of a donation on the ground of ingratitude, cannot be brought except by the donor or his heirs.

**1899** [1865]. An action for the revocation of a donation can be brought only against the donee, and not against his heirs or successors; but if it has been brought against the donee, it may be continued against his heirs or successors.

<sup>53</sup> For the sense in which "injury" is here employed, see note to Art. 224 [67].

**1900** [1866]. The revocation of a donation on the ground of ingratitude has no effect against third persons under alienations made by the donee; nor under mortgages or other real charges which he imposed on the property donated, before service of the complaint upon him.

**1901** [1867]. Between the donor and the donee the effects of a revocation on the ground of ingratitude are retroactive to the date of the donation, and the donee is bound not only to return all the property donated which he possesses, but he must also compensate the donor for all the property which he has alienated, and indemnify him for all the mortgages and other real charges he has laid thereon, whether under an onerous or a lucrative title.

**1902** [1868]. Donations cannot be revoked on account of the birth of children to the donor after the donation, if this condition has not been expressly stipulated.

## TITLE IX. OF MANDATE.

**1903** [1869<sup>2</sup>]. A mandate, as a contract, takes place when one party gives another the power, which the latter accepts, to represent him, for the purpose of executing in his name and for his account some juridical act, or a series of acts of this nature.

**1904** [1870]. The provisions of this Title are applicable:

1. To necessary representations, and to the representations of those who on account of their public office are required to represent certain classes of persons, or certain classes of property, in so far as not opposed to the special laws thereon.

2. To the representations of corporations and of establishments of public utility.

3. To the representations for the administration or liquidation of associations, in cases in which it is so provided in this Code, and in the Code of Commerce.

4. To the representations for dependent persons, such as children under the paternal power in relation to their parents, a servant in relation to his master, an apprentice in relation to his teacher, a soldier in relation to his superior, which shall be governed by the provisions of this Title, if they do not necessarily presuppose a contract between the representative and the person represented.

5. To representations by unauthorized agents (*negotiorum gestor*).

6. To judicial procurations, in so far as not in conflict with the provisions of the Code of Procedure.

7. To representations by testamentary or dative executors.

**1905** [1871]. A mandate may be gratuitous or onerous. The presumption is that it is gratuitous, when it has not been stipulated that the mandatary is to receive compensation for his work. The presumption is that it is onerous, when it consists of powers or functions conferred upon the mandatary by the law, and when it consists of work constituting the paid profession of the mandatary, or his means of livelihood.

**1906** [1872]. The power which the mandate confers is limited to that which the constituent could do, if he were to proceed or act in person.

**1907** [1873]. A mandate may be express or implied. An express mandate may be conferred by a public or private instrument, by letters, and also verbally.

**1908** [1874]. An implied mandate results not only from the positive acts of the principal, but also from his nonaction or silence, or from his not preventing it, if able to do so, when he knows that some one is doing something in his name.

**1909** [1875]. The mandate may be accepted in any form expressly or impliedly. An express acceptance results from the same acts and in the same forms as an express mandate.

**1910** [1876]. An implied acceptance results from any act of the mandatary in execution of the mandate, or even from his silence.

**1911** [1877]. Between persons present, the acceptance of the mandate is presumed, if the constituent delivered his



power of attorney to the mandatary, and the latter received it without any protest whatsoever.

**1912** [1878]. Between persons absent, the acceptance of the mandate does not result from the silence of the mandatary, except in the following cases:

1. When the principal transmits his power of attorney to the mandatary, and the latter receives it without any protest.

2. When the principal confers upon him by letters a mandate relating to business which on account of his trade, profession or means of livelihood he is accustomed to receive and he does not make any answer to the letters.

**1913** [1879]. A mandate is general or special. A general mandate comprises all the business of the principal, and a special mandate, one or more specified transactions.

**1914** [1880]. A mandate drawn in general terms comprises acts of administration only, even though the principal declare that he reserves no power, and that the mandatary may do anything which he deems proper, or even though the mandate contain a clause of general and free administration.

**1915** [1881]. Special powers of attorney are necessary:

1. To make payments which are not the usual payments of administration.

2. To make novations which extinguish obligations already existing at the time of the mandate.

3. To transact (compromise), to submit to arbitration, to submit to other jurisdictions, to waive the right of appeal, or acquired prescriptions.

4. To make any gratuitous waiver, or remission, or composition of debts, except in the event of the failure of the debtor.

5. To contract marriage in the name of the principal.

6. To acknowledge natural children.

7. To execute any contract the object of which is to convey or acquire the ownership of real property, under an onerous or gratuitous title.

8. To make donations, other than presents of small

sums, to the employees or persons in the service of the administration.

9. To loan or borrow money, unless the business consists of lending and borrowing money at interest, or the loans are a consequence of the administration, or it be absolutely necessary to borrow money to preserve the things which are administered.

10. To give in lease for more than six years the immovable property under his charge.

11. To constitute the principal a depositary, unless the mandate consists of the receipt of deposits or consignments; or the deposit is a consequence of the administration.

12. To obligate the principal to render some service, as employer, or gratuitously.

13. To enter into a partnership.

14. To constitute the principal a surety.

15. To constitute or assign real rights in immovables.

16. To accept inheritances.

17. To acknowledge or confess obligations antedating the mandate.

**1916** [1882]. A special power of attorney to compromise, does not include the power to submit to arbitration.

**1917** [1883]. A special power of attorney to make sales, does not include the power to mortgage; nor to receive the price of the sale, when time for payment has been granted; nor does a power to mortgage include the power to sell.

**1918** [1884]. A special power of attorney for certain acts of a specified nature, must be limited to the acts for which it is given, and cannot be extended to include other similar acts, even though such acts could be considered as a natural consequence of those which the constituent ordered performed.

**1919** [1885]. A special power of attorney to mortgage the immovable property of the principal does not include the power to mortgage it for debts prior to the mandate.

**1920** [1886]. The power to contract an obligation includes the power to perform it, provided the principal has

delivered to the mandatary the money or the thing which is to be given in payment.

**1921** [1887]. The power to sell the property of an inheritance does not include the power to assign it before having received it.

**1922** [1888]. A power to collect debts does not include the power to sue the debtors, nor to receive one thing in lieu of another, nor to make novations, remissions or compositions.

## CHAPTER I.

### Of the Object of Mandate.

**1923** [1889]. All lawful acts, susceptible of producing an acquisition, modification or extinction of rights, may be the object of a mandate.

**1924** [1890]. A mandate does not confer representation, nor does it extend to dispositions of last will, nor to acts *inter vivos*, the exercise of which by mandataries is prohibited by this Code or other laws.

**1925** [1891]. A mandate to perform an unlawful, impossible or immoral act, does not give any right of action whatsoever to the principal against the mandatary, nor to the latter against the principal, unless the mandatary does not know, or should not have any reason to know, that the mandate was unlawful.

**1926** [1892]. The object of a mandate may be two or more transactions of exclusive interest to the principal, or of common interest to the principal and mandatary, or of common interest to the principal and third persons, or of exclusive interest to a third person; but not in the exclusive interest of the mandatary.

**1927** [1893]. Persuasion or advice, in the exclusive interest of the person to whom it is given, does not produce any obligation whatsoever, except when bad faith is present, and in such case the person who has employed the persuasion or given the advice, must pay the damages he causes.

## CHAPTER II.

### Of the Capacity to be a Constituent or a Mandatary.

**1928** [1894]. A mandate for acts of administration must be conferred by a person who has the administration of his property.

**1929** [1895]. If the mandate is for acts relating to the disposition of his property, it cannot be conferred by a person other than one capable of disposing thereof.

**1930** [1896]. All persons capable of entering into contracts may be mandataries, except as to those acts for which the law has conferred special powers to specified classes of persons.

**1931** [1897]. A mandate may be validly granted to a person incapable of obligating himself, and the principal is bound by the execution of the mandate, both as to the mandatary, as with respect to the third persons with whom the latter has contracted.

**1932** [1898]. An incapacitated person who has accepted a mandate, may set up the nullity of the mandate when sued by the principal on account of the non-performance of the obligations of the contract, or for an accounting, without prejudice to the right of action of the principal as to what the mandatary may have converted to his own use.

**1933** [1899]. When two or more mandataries have been appointed in the same instrument, it is understood that the appointment was made to be accepted by one of the appointees only, with the following exceptions:

1. When under the appointment all or some of them are to act conjointly.
2. When under the appointment all or some of them are to act separately, or when the principal has divided the management among them, or has empowered them to divide it among themselves.
3. When under the appointment one of them is to act in the absence of the other appointee or appointees.

**1934** [1900]. When the appointment provides that all or some of the appointees are to act conjointly, the mandate cannot be accepted separately.

**1935** [1901]. When under the appointment one of them is to act in the absence of the other appointee or appointees, the person appointed in the second place cannot accept the mandate, except in absence of the one first named, and so on. Absence exists if any of the persons appointed is not able or willing to accept the mandate, or after having accepted it, cannot carry it out for any reason whatsoever.

**1936** [1902]. The appointment is understood to have been made for one of the appointees to act in the absence of another, when the principal made the appointment in numerical order, or designating one in the first place, and the other in the second.

**1937** [1903]. When the mandate is accepted by one of the persons appointed, his subsequent withdrawal, death or incapacity, entitles each of the others appointed to accept it according to the order of his appointment.

### CHAPTER III.

#### Of the Obligations of the Mandatary.

**1938** [1904]. A mandatary is bound by his acceptance to execute the mandate, and answer for any damages sustained by the principal by the nonexecution of the mandate in whole or in part.

**1939** [1905]. He must confine himself to the limits of his power, and not do less than that with which he has been charged. The nature of the business determines the extent of the powers to attain the object of the mandate.

**1940** [1906]. The limits of the mandate are not considered to have been exceeded when it has been performed in a manner more advantageous than that determined therein.

**1941** [1907]. A mandatary must abstain from executing the mandate, if its execution would be manifestly prejudicial to the principal.

**1942** [1908]. The mandatary does not discharge his mandate faithfully if, his interests and those of the principal being opposed, he gives preference to his own.

**1943** [1909]. A mandatary is obliged to render an account of his transactions, and turn over to the principal whatever he has received under the mandate, even though what he has received is not owed the principal.

**1944** [1910]. An exemption from the rendition of accounts does not relieve the mandatary of the charges which the principal proves against him.

**1945** [1911]. The obligation of the mandatary to deliver what he has received under the mandate, includes everything which the principal has entrusted to him and of which he did not dispose by his order; everything which he has received from a third person, even though he received it without a right thereto; all the profits arising out of the business entrusted to him; the titles, documents and papers which the principal entrusted to him, with the exception of the letters and instructions which the principal may have sent or given him.

**1946** [1912]. If on account of the mandate being unlawful, illegal profits have been obtained, the principal cannot compel the mandatary to turn them over to him; but if, the mandate being lawful, illegal profits have been obtained through an abuse on the part of the mandatary, the principal may compel the mandatary to deliver them to him.

**1947** [1913]. The mandatary owes interest on the sums which he has applied to his own use, from the date on which he did so, and on the amounts which he may still owe from the time delay in the payment thereof has begun to run against him.

**1948** [1914]. The mandatary may, by a special agreement, assume liability for the solvency of the debtors and all the uncertainties and vexations of collection; constituting himself from that time the principal debtor of the constituent, and even fortuitous events and cases of *force majeure* run for his account.

**1949** [1915]. The loss of the sums of money which the mandatary has in his possession for the account of the principal

shall be borne by the mandatary, even though the loss be due to *force majeure* or a fortuitous event; unless they have been placed in closed boxes or bags which were the object of the accident or force.

**1950** [1916]. A mandatary who finds himself unable to act under his instructions, is not obliged to constitute himself a *negotiorum gestor*: it shall be sufficient that he adopt such conservatory measures as the circumstances may call for.

**1951** [1917]. If the business entrusted to the mandatary is of the character which he regularly accepts in the course of his own occupation or means of livelihood, he must adopt the urgent conservatory measures which the business entrusted to him may call for, even though he should excuse himself from undertaking it.

**1952** [1918]. A mandatary is not permitted, either in person or through a third party, to purchase the things which his constituent has ordered him to sell, nor sell out of his own property to the principal what the latter has ordered him to buy, except with the express approval of the principal.

**1953** [1919]. If he has been directed to borrow money, he may lend it himself at the current rate of interest; but if empowered to place money at interest, he cannot borrow it for his own use, without the approval of the principal.

**1954** [1920]. When a mandate has been given to a number of persons conjointly, there is no solidarity among them, in the absence of an agreement to the contrary.

**1955** [1921]. When solidarity has been stipulated, each of the mandataries is liable for all the consequences of the non-performance of the mandate, and for the consequences of the faults committed by his co-mandataries; but in the latter case none of the mandataries is liable for what the other does, exceeding the limits of the mandate.

**1956** [1922]. When solidarity has not been stipulated, each of the mandataries is liable only for his personal faults or acts.

**1957** [1923]. With regard to the damages <sup>54</sup> due on account of the non-performance of the mandate, each of the man-

<sup>54</sup>*Pérdidas é intereses*: See Art. 1103 [1069].

dataries is not bound beyond an equal share: but if under the terms of a mandate granted to a number of persons, one of the mandataries is unable to act without the concurrence of the others, the one who has refused to co-operate in the execution of the mandate would be the only one liable for all damages on account of the non-performance of the mandate.

**1958 [1924].** A mandatary may substitute another in his place for the execution of the mandate; but he is answerable for the person that he has substituted in his place, when he has not received the power to do so, or when he has received this power, without the designation of the person that he could substitute in his place, and has selected a person notoriously incapable or insolvent.

**1959 [1925].** Even though the mandatary has substituted his powers, he may revoke the substitution whenever he deems it advisable. As long as it continues, he is bound to oversee the exercise of the powers conferred upon the substitute.

**1960 [1926].** The principal has in all cases a direct action against the substitute, but only as to the obligations the latter has contracted under the substitution; and reciprocally, the substitute has an action against the principal on account of the execution of the mandate.

**1961 [1927].** The principal has a direct action against the substitute, whenever he becomes liable for damages owing to a fault committed by the latter.

**1962 [1928].** The relations between the mandatary and his substitute are governed by the same rules which govern the relations between the principal and the mandatary.

**1963 [1929].** The mandatary may, in the performance of his trust, contract in his own name or in that of the principal. If he contracts in his own name, he does not bind the principal as to third persons. The principal may, nevertheless, demand a judicial subrogation to the rights and actions arising out of the acts, and may be compelled by third creditors exercising the rights of the mandatary to perform the obligations resulting therefrom.

**1964 [1930].** When he contracts in the name of the principal, he is not personally obligated to the third persons with



whom he has contracted, nor does he acquire any personal right against them, provided he has contracted in accordance with the terms of the mandate, or otherwise, that the principal has ratified the contract.

**1965 [1931].** When he contracts in the name of the principal, exceeding the limits of his mandate, and the principal does not ratify the contract, it shall be void if the party with whom the mandatary contracted knows the powers conferred by the principal.

**1966 [1932].** In the case of the preceding article, he is obligated only to the party with whom he contracted, if he obligated himself personally and in writing, or engaged to present the ratification of the principal.

**1967 [1933].** He is nevertheless personally obligated, and an action may be brought against him for the performance of the contract or to recover damages,<sup>55</sup> if the party with whom he contracted was not acquainted with the powers given by the principal.

**1968 [1934].** An act is considered to have been performed within the limits of the mandate with respect to third persons, when it comes within the terms of the power of attorney, even though the mandatary has really exceeded the limit of his powers.

**1969 [1935].** The implied ratification by the principal results from any act on his part which necessarily implies an approval of what the mandatary has done. It also results from the silence of the principal, if having been advised of what the mandatary has done, he did not make any answer on the subject.

**1970 [1936].** The ratification is equivalent to a mandate, and has a retroactive effect between the parties to the date of the act, as to all the consequences of a mandate; but without prejudice to the rights constituted by the principal in favor of third persons during the time intervening between the act of the mandatary and the ratification.

**1971 [1937].** Third persons cannot set up an extra-limitation or non-observance of the mandate, after the principal

<sup>55</sup> *Pérdidas é intereses.* See Art. 1103 [1069].

has ratified, or is willing to ratify what the mandatary has done.

**1972 [1938].** The third persons with whom the mandatary desires to contract in the name of the principal, are entitled to demand the production of the power of attorney, the mandatory letters, or the instructions relating to the mandate. Private orders, or the secret instructions of the principal do not have any bearing whatsoever upon the rights of third persons who have contracted in view of the power of attorney, orders or instructions shown them.

**1973 [1939].** When the contract has been reduced to a public deed (*escritura pública*) the provisions relating to public instruments (*instrumentos públicos*) must be observed, when the parties thereto are represented by an attorney-in-fact, or are necessary representatives. When the contract has been entered into by a private instrument, the party entering into the contract with the mandatary has the right to demand the delivery of the original instrument containing the mandate, or a copy thereof in authentic form.

**1974 [1940].** In case of doubt as to whether the contract has been entered into in the name of the principal or in the name of the mandatary, the nature of the business, the commission contained in the mandate, and the provisions of the Code of Commerce relating to commissions shall be observed.

## CHAPTER IV.

### Of the Obligations of the Principal.

**1975 [1941].** When two or more principals have conferred the mandate in common for a common transaction, they shall not be obligated solidarily as to third persons, unless they expressly authorized the mandatary to so obligate them.

**1976 [1942].** The substitution of a mandatary not authorized by the principal, nor ratified by him, does not obligate him as to third persons for the acts of the substitute.

**1977 [1943].** When two persons enter into a contract involving the same object, one of them with the mandatary, and the other with the principal, and when both contracts cannot subsist, that of prior date shall subsist.

**1978 [1944].** In the case of the preceding article, if the mandatary has contracted in good faith, the principal shall be liable for the damage caused a third person whose contract does not subsist. If he has contracted in bad faith, that is to say, after having been advised by the principal, he alone shall be liable for such damages.

**1979 [1945].** If two or more persons have appointed a mandatary for a common transaction, they shall be solidarily liable to him for all the consequences of the contract.

**1980 [1946].** The juridical acts performed by the mandatary within the limits of his powers, and in the name of the principal, as well as the obligations which he has contracted, are considered as done by the principal in person.

**1981 [1947].** A mandatary cannot demand in his own name the performance of obligations, nor be personally sued for the performance thereof.

**1982 [1948].** The principal must advance to the mandatary, if he so requests, the amounts necessary for the performance of the mandate.

**1983 [1949].** If the mandatary advanced them, the principal must repay the sums to him, even though the outcome of the transaction had not been profitable to him, and even though the expenses should appear to him to be excessive, provided no fault can be charged to the mandatary; but he may impugn them, if they are really excessive.

**1984 [1950].** The reimbursement shall include interest on the advancement, from the date it was made.

**1985 [1951].** The principal must release the mandatary from the obligations which he has contracted in his name, as to third persons, in the performance of the mandate, or provide him with the things or funds which he requires to obtain his discharge.

**1986 [1952].** He must also compensate the mandatary for his services. The compensation may consist of a share

of the money or of the property which the mandatary has obtained or administered in the performance of the mandate, without prejudice to the provisions of the Code of Procedure regarding lawyers and judicial solicitors.

**1987** [1953]. He must likewise indemnify the mandatary for any losses sustained by him in the execution of his commission, if no fault can be charged against the mandatary.

**1988** [1954]. Only a loss which the mandatary would not have sustained, had he not accepted the mandate, is considered loss occasioned by the execution of a mandate.

**1989** [1955]. A mandatary is not required to await the presentation of his accounts, or the entire fulfillment of the mandate in order to demand payment of the advances or expenses made or incurred by him.

**1990** [1956]. The mandatary may retain an amount sufficient to cover his advances and expenses, and his compensation or commission, out of any property or things of value belonging to the principal which are at his disposition, until he has been paid them.

**1991** [1957]. The principal is not obliged to pay the expenses incurred by the mandatary:

1. When incurred against his express prohibition, unless he desires to take advantage of the benefits resulting to him therefrom.

2. When occasioned by the fault of the mandatary himself.

3. When he incurred them, even though ordered to do so, with a knowledge of the unfavorable result, when the principal was unaware thereof.

4. When it had been agreed that the expenses were to be borne by the mandatary, or that the latter was to be allowed a specified amount only.

**1992** [1958]. If the mandate is resolved without the fault of the mandatary, or by the revocation of the principal, the latter must pay the mandatary a compensation in proportion to the service rendered; but if the mandatary received his compensation or a part thereof in advance, the principal cannot compel him to return it.

**1993** [1959]. After payment of the expenses and compensation of the mandatary, the principal is not obliged to pay any compensation or commissions to the persons who substituted the mandatary in the execution of the mandate, unless the substitution was indispensable.

## CHAPTER V.

### Of the Termination of the Mandate.

**1994** [1960]. A mandate terminates upon the conclusion of the business, and upon the expiration of the determined or undetermined period for which it was constituted.

**1995** [1961]. The principal must abide by the date of the private acts executed by the mandatary, and the burden of the proof that the act has been antedated lies on him.

**1996** [1962]. A mandate given to a substitute terminates also upon the termination of the powers of the mandatary who made the substitution, whether a voluntary or necessary representative.

**1997** [1963]. A mandate terminates:

1. Upon the revocation thereof by the principal.
2. Upon the withdrawal of the mandatary.
3. Upon the death of the principal or of the mandatary.
4. Upon the principal or mandatary becoming incapacitated.

**1998** [1964]. In order for the mandate to be terminated with respect to the mandatary and the third persons with whom he has contracted, it is essential for them to have known or have been in a position to know of the termination of the mandate.

**1999** [1965]. Neither the principal, nor his heirs or representatives, are bound by anything done with a knowledge or imputable ignorance of the termination of the mandate.

**2000** [1966]. In relation to the mandatary, anything done by him in ignorance, without his fault, of the termination

of the mandate, is binding upon the principal, his heirs or representatives, even when he has entered into contracts with third persons who had knowledge thereof.

**2001** [1967]. In relation to third persons, when they have entered into contracts with the mandatary in ignorance, without their fault, of the termination of the mandate, the contract is binding upon the principal, his heirs and representatives, reserving their rights against the mandatary, if he knew of the termination of the mandate.

**2002** [1968]. Third persons may, if they so desire, compel the principal, his heirs or representatives, to perform the contracts entered into by them with the mandatary, in ignorance of the termination of the mandate; but the principal, his heirs or representatives, cannot take advantage of that ignorance to compel them to perform what was done after the termination of the mandate.

**2003** [1969]. Notwithstanding the termination of the mandate, the mandatary, his heirs, or the representatives of his incapacitated heirs, are bound to continue personally, or through others, the transactions begun which do not admit of delay, until the principal, his heirs or representatives take some action thereon, under the penalty of being answerable for any loss caused by their failure to do so.

**2004** [1970]. The principal may revoke the mandate at will, and compel the mandatary to return the instrument whereby the mandate was conferred.

**2005** [1971]. The appointment of a new mandatary for the same business operates to revoke the first appointment from the date on which the first mandatary was notified thereof.

**2006** [1972]. When the principal takes a direct part in the business entrusted to the mandatary, and places himself in communication with the third persons, the mandate is revoked, if he does not expressly state that it is not his intention to revoke the mandate.

**2007** [1973]. A mandate naming a new mandatary revokes the first one, even though it produce no effect on account of the death or incapacity of the second mandatary,

or even though he does not accept it, or even though the instrument containing the mandate is void on account of a defect or vice in form.

**2008** [1974]. When the mandate has been constituted by two or more principals for a common transaction, any one of them may revoke it without the concurrence of the others.

**2009** [1975]. When the mandate is general, a special power of attorney given another mandatary repeals, in so far as the special matter is concerned, the previous general power of attorney.

**2010** [1976]. A special power of attorney is not repealed by a subsequent general power of attorney, given to another person, unless it includes in its general terms the business covered by the previous power of attorney.

**2011** [1977]. A mandate is irrevocable when it is the condition of a bilateral contract, or the means of performing an obligation contracted, or when a partner is the manager of a partnership under the contract of partnership, and there is no just cause for removing him from the management.

**2012** [1978]. A mandatary may renounce the mandate upon giving notice to the principal; but if he should do so at an inopportune time, without sufficient cause, he must indemnify the principal for any loss which his withdrawal may cause him.

**2013** [1979]. A mandatary, even though he renounce the mandate with just cause, must continue to conduct the business, if not absolutely impossible for him to do so, until the principal can take the necessary steps to supply his absence.

**2014** [1980]. The death of the principal does not terminate the mandate, when the business which constitutes the subject of the mandate is to be completed or continued after his death. The business must be continued if, having been begun, there is risk in delaying it.

**2015** [1981]. Even though the business is to be continued after the death of the principal, and even though it has been expressly agreed that the mandate is to continue after the death of the principal or of the mandatary, the contract is resolved if the heirs are under age or subject to some other incapacity, and are represented by their tutors or curators.

**2016** [1982]. The mandate continues in force even after the death of the principal, when it has been granted in the common interest of the latter and of the mandatary, or in the interest of a third person.

**2017** [1983]. Any mandate to be carried out after the death of the principal is void if it has no force as a disposition of last will.

**2018** [1984]. The incapacity of the principal or mandatary which causes a mandate to terminate takes place whenever either of them loses, in whole or in part, the exercise of his rights.

**2019** [1985]. Nevertheless, a mandate conferred by a woman before her marriage continues in force, if it relates to acts which she can perform without requiring authorization from her husband.

## TITLE X. OF SURETYSHIP.

**2020** [1986]. There is a contract of suretyship when one of the parties has bound himself in an accessory manner for a third person, and the creditor of such third person has accepted his accessory obligation.

**2021** [1987]. The suretyship may also be constituted as a unilateral act before its acceptance by the creditor.

**2022** [1988]. The suretyship may precede the principal obligations and be given to secure a future obligation, without it being necessary that the amount thereof be limited to a fixed sum. It may make reference to the amount of the obligations which the debtor contracts.

**2023** [1989]. Suretyship for a future obligation must have a specified object, even when the future credit is uncertain and its figures indeterminate.

**2024** [1990]. A surety for future obligations may withdraw the suretyship before the existence of the principal obligation; but he shall be liable to the creditor and the third party in good faith who were unaware of the withdrawal of



the security, in the same manner as a principal who has revoked a mandate.

**2025** [1991]. The object of the suretyship cannot be a prestation<sup>56</sup> differing from that which forms the subject of the principal obligation.

**2026** [1992]. When the object of the principal obligation is not the payment of a sum of money, or of a thing of value appraisable in money, but the delivery of a specified thing, or some act which the debtor is required to perform in person, the surety for the obligation is only bound to pay the damages due the creditor on account of the non-performance of the obligation.

**2027** [1993]. Any obligation may be secured, whether a civil obligation, or a natural obligation, or an accessory or principal obligation, derived from any cause, even though from an unlawful act; whosoever the creditor or debtor may be, and even though the creditor be an uncertain person; whether the value be certain or uncertain, liquidated or unliquidated, pure or simple; limited or conditional, and whatever be the form of the principal instrument.

**2028** [1994]. Suretyship cannot exist without a valid obligation. If the obligation never existed, or is extinguished, or is derived from an act or contract which is void or has been annulled, the suretyship is void. If the principal obligation is derived from a voidable act or contract, the suretyship is also voidable. But if the cause of the nullity consists of some relative incapacity of the debtor, the surety, even though unaware of the incapacity, is liable as the only debtor.

**2029** [1995]. A surety may bind himself for less but not for more than the principal debtor; but he may, in order to guarantee his obligation, furnish security of any kind. If he has bound himself for more, his obligation shall be reduced to the amount of that of the debtor. In case of doubt as to whether he bound himself for less, or for the same amount as the principal obligation, it is understood that he bound himself for the same amount.

<sup>56</sup> See note to Art. 1683 (1640).

**2030** [1996]. If the debt secured was not liquidated and the surety bound himself for a net amount, his obligation is limited to the amount of the debt secured, if the liquidation shows that the amount promised by the surety exceeded it.

**2031** [1997]. If the security should be for the principal obligation, or state the amount of said obligation, it shall cover not only the principal obligation, but also interest, whether stipulated or not.

**2032** [1998]. Suretyship may be legal or judicial. When suretyship is required by the law, or by the judges, the surety must be domiciled in the place where the principal obligation is to be performed and must be known to be well-to-do (*abonado*), either on account of owning known real property, or on account of enjoying in the place an unquestionable credit.

**2033** [1999]. A person bound to furnish a surety cannot substitute therefor a pledge or mortgage, and *vice versa*, against the will of the creditor.

**2034** [2000]. The provisions of the preceding article do not apply when suretyship is required by the law or judges. The judges may admit in place thereof pledges or mortgages in a sufficient amount.

**2035** [2001]. If the surety becomes insolvent after having been accepted, the creditor may demand that he be furnished another sufficient surety.

**2036** [2002]. In limited obligations and those covering a period of time, the creditor who did not demand suretyship at the time of the contract may require it if, after the celebration of the contract, the debtor becomes insolvent or transfers his domicile to another province.

**2037** [2003]. The suretyship is solidary with the principal debtor, when so stipulated, or when the surety renounces the benefit of discussion of the property of the debtor, or when the national or provincial treasury is the creditor.

**2038** [2004]. The solidarity to which the surety may subject himself does not deprive the suretyship of its character as an accessory obligation, and does not make the surety a direct debtor of the principal obligation. Solidary suretyship is governed by the rules relating to simple suretyship, with the

exception of the loss of the benefit of discussion and that of division.

**2039** [2005]. When a person binds himself as the principal payor, even though it be under the name of surety, he is a solidary debtor and the provisions relating to solidary co-debtors are applicable to him.

**2040** [2006]. Suretyship may be contracted in any form: verbally, by a public or private instrument; but if denied in court, it can be proved only by written evidence.

**2041** [2007]. Letters of credit are not considered security, unless the person who issued them expressly declares that he assumes the responsibility for the credit.

**2042** [2008]. Letters of recommendation, in which assurance is given of the honesty and solvency of a person seeking credit, do not constitute security.

**2043** [2009]. If the letters of recommendation are given in bad faith, and contain false affirmations as to the solvency of the person recommended, the person subscribing them is liable for any damage sustained by the persons to whom they are addressed, on account of the insolvency of the person recommended.

**2044** [2010]. The liability referred to in the preceding article does not lie if the person who gave the letter proves that it was not his recommendation which led to transactions with the person recommended by him, or that it was after his recommendation that the person recommended became insolvent.

## CHAPTER I.

### Of Persons who can be Sureties.

**2045** [2011]. All persons who have the capacity to contract loans have the capacity to bind themselves as sureties, without any difference in the cases, with the exception of the following:

1. Emancipated minors, even though they obtain judicial permission and even though the security does not exceed five hundred *pesos*.

2. The administrators of the property of corporations on behalf of the juristic persons they represent.

3. Tutors, curators, and all necessary representatives, on behalf of the persons they represent, even though authorized by the judge.

4. The managers of associations, if they do not have special powers of attorney.

5. Mandataries, on behalf of their constituents, if they do not have special powers of attorney.

6. Persons who have taken sacred orders, whatever be their hierarchy, unless it be for their churches, for other clerics or for destitute persons.

## CHAPTER II.

### Of the Effects of Suretyship between the Surety and the Creditor.

**2046** [2012]. The surety cannot be compelled to pay the creditor, without the previous discussion<sup>67</sup> of all the property of the debtor.

**2047** [2013]. Previous discussion by the creditor is not necessary in the following cases:

1. When the creditor has expressly waived this benefit.
2. When the suretyship is solidary.
3. When he has bound himself as the principal payor.
4. When he has succeeded the principal debtor as his heir.
5. When the debtor has become bankrupt, or is absent from his domicile at the time the obligation matures.
6. When the debtor cannot be sued within the Republic.
7. When the obligation secured is a purely natural one.
8. When the security is judicial.

<sup>67</sup> That is to say before having exhausted all actions against the property of the debtor.

9. When the debt is owing to the national or provincial treasury.

**2048** [2014]. If the property of the debtor is without the territory of the Province, or of the capital of the Republic, where the judge exercises his jurisdiction, or if it has been attached by another creditor, or is subject in some manner to another action, the discussion of such property is not necessary in order to demand payment of the obligation from the surety.

**2049** [2015]. Even when the surety has not been called on to make payment, he may have notice served on the creditor, as soon as the debt becomes demandable, to proceed against the principal debtor, and if the creditor does not do so, the surety is not liable for the insolvency of the debtor occurring during the delay.

**2050** [2016]. When a number of principal debtors have bound themselves solidarily, and one of them has given security, the surety called on to make payment is entitled not only to the discussion of the property of the debtor secured by him, but also of that of his co-debtors.

**2051** [2017]. If the property discussed produces a partial payment only, the creditor is obliged to accept it, and cannot demand payment of the surety, except of the portion remaining unpaid.

**2052** [2018]. If the creditor is guilty of omission or negligent in the discussion, and the debtor becomes insolvent in the meantime, the liability of the surety is discharged.

**2053** [2019]. The surety of a surety enjoys the benefit of discussion both as to the surety and the principal debtor.

**2054** [2020]. Even though the surety be solidary with the debtor, he may set up against the creditor all proper defenses and those which the principal debtor could set up against him in a simple security, excepting only such as are based on his incapacity.

**2055** [2021]. A surety may set up in his own behalf all the defenses which lie in behalf of the debtor, even against the will of the latter.

**2056** [2022]. The voluntary waiver by the debtor of

the prescription of the debt, or of any other cause of release, or of the nullity or rescission of the obligation, does not prevent the surety from pleading these defenses.

**2057 [2023].** A surety may intervene in the proceedings between the creditor and the debtor which involve the existence or validity of the principal obligation; and if he has not intervened, the judgments rendered do not prevent him from setting up these defenses.

**2058 [2024].** If there should be two or more sureties for the same debt, who have not bound themselves solidarily to payment, the debt is understood to be divided among them in equal parts, and the creditor cannot demand of any of them more than the share corresponding to him. All the provisions contained in Title XII, Section I, Part I, of this Book, are applicable to merely joint sureties.

### CHAPTER III.

#### Of the Effects of Suretyship between the Debtor and the Surety.

**2059. [2025]** The surety may demand the debtor to release him when five years have passed since he furnished the security, unless the principal obligation is of such a nature as not to be subject to extinguishment within a certain time, or has been contracted for a longer term.

**2060 [2026].** The surety may demand the attachment of the property of the debtor or his release as surety in the following cases:

1. If he is sued for payment.
2. If the debt having matured, the debtor does not pay it.
3. If he dissipates his property, or undertakes risky transactions, or gives it as security for other obligations.
4. If he seeks to leave the Republic, without leaving sufficient unencumbered real property for the payment of the debt.

**2061** [2027]. The right granted the surety by the preceding article, does not apply to a surety who bound himself against the express will of the debtor.

**2062** [2028]. If the debtor becomes bankrupt before paying the secured debt, the surety has the right to be included for his protection among the liabilities of the estate of the bankrupt.

**2063** [2029]. A surety who pays the debt secured, even though he had bound himself against the will of the debtor, is subrogated to all the rights, actions, privileges<sup>59</sup> and guarantees of the creditor against the debtor, both prior and subsequent to the security, without the necessity of any assignment. This provision includes the privileges of the public treasury, national well as provincial.

**2064** [2030]. A surety subrogated to the rights of the creditor may demand all that he has paid by way of principal, interest and costs, and interest at the legal rate from the date of payment, as well as indemnity for all damages sustained by him by reason of the suretyship.

**2065** [2031]. If the surety made payment before the maturity of the debt, he cannot collect it until the obligation of the debtor has matured.

**2066** [2032]. A person who has become surety for a number of debtors *in solido*, has a right of action against each one of them to recover the entire amount he has paid. A person who has become surety for only one of a number of debtors *in solido*, is subrogated to the creditor for the entire amount; but he can claim of the others only what the debtor for whom he has given security would have a right to claim of them in a proper case.

**2067** [2033]. If the surety makes payment without the consent of the debtor, and the latter pays the debt in ignorance of such payment, the surety in such case has no right of action against the debtor; but he retains his remedy against the creditor.

If the surety pays without notifying the debtor, the latter may set up against him all the defenses which he could have set up against the creditor.

<sup>59</sup> See Art. 3909 [3875].

**2068** [2034]. Nor can the surety demand repayment of the debtor of what he has paid, if he failed to set up the defenses which are not personal or his own defenses which he knew the debtor to have against the creditor, or if he did not produce the evidence, or did not interpose the remedies which could defeat the action of the creditor.

**2069** [2035]. When the surety has paid without being sued, and without notifying the debtor, he cannot bring an action to recover what he has paid, if the debtor proves that at the time payment was made he had defenses which extinguished the debt.

**2070** [2036]. The surety may bring an action against the debtor to recover what he has paid, even though he made payment without having been sued, and without having notified him, provided the payment has not caused the debtor any damage.

## CHAPTER IV.

### Of the Effects of Suretyship among the Cosureties.

**2071** [2037]. The cosurety who pays the debt secured, is subrogated to all the rights, actions, privileges and guaranties of the creditor against the other cosureties, for the recovery of the portion due from each of the cosureties.

**2072** [2038]. A surety who pays more than the amount for which he is liable, is subrogated as to the excess, to the rights of the creditor against the cosureties, and may demand a proportionate part from all the cosureties.

**2073** [2039]. The other cosureties may set up against the surety who made the payment, all the defenses which the principal debtor could set up against the creditor; but not those merely personal to the latter.

**2074** [2040]. Nor can they set up against the cosurety who has made the payment, the purely personal defenses which he has against the creditor, and of which he did not wish to avail himself.



**2075 [2041].** The subsurety, in case of the insolvency of the surety for whom he bound himself, is liable to the other cosureties under the same conditions as was the surety.

## CHAPTER V.

### Of the Extinguishment of Suretyship.

**2076 [2042].** Suretyship is extinguished by the extinction of the principal obligation, and for the same causes as obligations in general, and accessory obligations in particular.

**2077 [2043].** Suretyship is also extinguished when the subrogation to the rights of the creditor, such as mortgage, privileges, etc., has become impossible on account of a positive act, or the negligence of the creditor.

**2078 [2044].** The foregoing article is applicable only to securities and privileges established before the suretyship, or at the same time the latter was given, and not to those given the creditor after the constitution of the suretyship.

**2079 [2045].** If the subrogation to the rights of the creditor has become impossible in part only, the surety shall be discharged only in proportion to that part.

**2080 [2046].** An extension of time for payment granted by the creditor, without the consent of the surety, extinguishes the suretyship.

**2081 [2047].** The extinguishment of the suretyship on account of the novation of the obligation between the creditor and the debtor, takes place even though the creditor makes it with a reservation of his rights against the surety.

**2082 [2048].** The merger in the same person of the qualities of debtor and surety leaves in force the mortgages, bonds and all special securities given to the creditor by the surety.

**2083 [2049].** An onerous or gratuitous release by the creditor to the principal debtor discharges the suretyship, with the exception of the releases agreed to at a meeting of creditors, even though they import the remission of the debt

and even though the creditors do not expressly reserve their rights against the surety.

**2084** [2050]. If the creditor accepts in payment of the debt a thing other than that which was owed to him, even though he loses it subsequently by eviction, the surety is discharged.

## **TITLE XI. OF ALEATORY CONTRACTS. OF GAMING, BETTING AND CHANCE.**

**2085** [2051]. Contracts are aleatory when the advantages or losses therefrom to both contracting parties, or to one of them only, are dependent on an uncertain event.

**2086** [2052]. The contract of gaming takes place when two or more persons engage in play and agree to pay a sum of money, or some other specified object, to the one who wins.

**2087** [2053]. A wager takes place when two persons holding contrary opinions on any matter agree that the person whose opinion is found to be correct shall receive from the other a sum of money, or any other specified object.

**2088** [2054]. Chance is subject to the provisions of this Title, whether recourse be had thereto as a wager or as gaming.

**2089** [2055]. It is prohibited to bring an action for the recovery of gambling debts, or of wagers not arising out of a test of strength, skill in the use of arms, races, and other games or wagers of a similar character, provided there is no violation of the law or of police regulations.

**2090** [2056]. Judges may reduce the amount of debts arising out of the games permitted by the foregoing article when they are excessive in relation to the means of the debtors.

**2091** [2057]. A gambling debt or a wager cannot be set off, nor be converted by novation into an obligation having civil force.

**2092** [2058]. A person who has signed an obligation, the real consideration of which is a gambling debt or wager, is included, notwithstanding the designation of some other

consideration having civil force, in the exception of the preceding article, and he may prove the real consideration of the obligation by any means.

**2093** [2059]. If an obligation arising out of gambling or a wager has been given the form of a title payable to order, the signer thereof must pay it to the holder in good faith; but he has a right of action to recover the amount from the person who received the paper. The delivery thereof is not equivalent to the payment he may have made.

**2094** [2060]. Gambling debts are those only which result directly from an agreement to play or wager, and not the obligations contracted to obtain the means wherewith to play or wager; and thus, when a third person, who is not a member of the party, makes an advance to one of the players, the latter is obliged to repay it, even though he has lost the sum loaned; but not if the loan was made by one of the players.

**2095** [2061]. The person who has received and executed a mandate to pay sums lost at gambling or in wagers, may demand repayment thereof from the principal; but if the mandate was to play for the account of the principal, or in partnership of the latter with the mandatary, the repayment of the amount advanced by the mandatary cannot be demanded of the principal.

**2096** [2062]. A third person who has paid a gambling debt or wager without a mandate, does not have any right of action whatsoever against the person for whom he made the payment.

**2097** [2063]. A person who has voluntarily paid gambling debts or wagers, cannot recover what he has paid, even though the play is of the forbidden class.

**2098** [2064]. A case in which there has been *dolus* or fraud on the part of the winner in the game is excepted.

**2099** [2065]. *Dolus* is present in the game or wager, when the winner was certain of the result, or employed some artifice to obtain it.

**2100** [2066] When there has been *dolus* or fraud on the part of the loser, no claim shall be considered.

**2101** [2067]. If the loser does not have the capacity to make a valid payment, his representatives may demand the return of the amount paid, not only of the winners, but also of the persons in whose houses the gambling took place, both being considered debtors *in solidum*.

**2102** [2068]. When the persons have employed the method of chance not as a wager or play, but for the purpose of dividing things held in common or putting an end to a dispute, in the former case it produces the effect of a partition, and in the latter that of a transaction.<sup>59</sup>

**2103** [2069]. Lotteries and raffles, when permitted, are governed by the respective municipal ordinances or police regulations.

## TITLE XII. OF THE ONEROUS CONTRACT OF LIFE ANNUITY.

**2104** [2070]. There is an onerous contract of life annuity, when a person in consideration of a sum of money, or something having a money value, whether movable or immovable, given to him by the other party, obligates himself to one or more persons to pay them an annuity during the lifetime of one or more persons named in the contract.

**2105** [2071]. An onerous contract of life annuity cannot be executed, under penalty of nullity, other than by a public instrument (*escritura*), and it shall not be perfected until the delivery of the money or the tradition of the thing of which the principal consists.

**2106** [2072]. If the price of a life annuity is given by a third person, the liberality of the latter by this means to the person for whose benefit the annuity is constituted is governed, as to its intrinsic validity and its effects, by the general provisions which refer to gratuitous titles; but the act of the constitution of the annuity is not, as to its extrinsic validity, subject to the formalities prescribed for donations *inter vivos*.

<sup>59</sup> See note to Art. 758 [724].

**2107 [2073].** A person having the capacity to make loans has the capacity to contract for the constitution of a life annuity in consideration of the money paid by him; and a person who has the capacity to contract loans has the capacity to obligate himself to pay it.

A person who has the capacity to sell movable or immovable things has the capacity to constitute a life annuity by the sale thereof; and a person who has the capacity to purchase has the capacity to obligate himself to pay them.

**2108 [2074].** The periodical prestation<sup>60</sup> can consist of money only; any other prestation in natural fruits or in services is payable by their equivalent in money.

**2109 [2075.]** Any stipulation that the creditor is not permitted to alienate his right to receive the annuity is void.

**2110 [2076.]** An annuity which constitutes a pension for support can neither be pledged nor attached in the hands of the beneficiary.

**2111 [2077].** A life annuity may be constituted for the lifetime of the person who gives the price or for that of a third person, or even for the lifetime of the debtor, or for that of a number of other persons. It may be created in favor of a single person or of a number of persons, either jointly or successively.

**2112 [2078].** A contract of life annuity is void if the annuity has been constituted for the lifetime of a person who did not exist on the day of its constitution, or for that of a person who was suffering, at the moment of the contract, of a disease from which he died within the next thirty days, even though the parties knew of the illness.

**2113 [2079].** When the annuity has been constituted in favor of a third person who is incapable of receiving from the person who has given the value thereof, the debtor cannot refuse to pay it. It must be paid to the person who has given the principal, or to his heirs, until the time prescribed by the contract for its extinction.

**2114 [2080].** The debtor of a life annuity is obliged to give all the security promised by him, such as a bond or

<sup>60</sup>See note to Art. 1683 [1640].

mortgage, and to pay the annuity at the periods specified in the contract.

**2115 [2081].** The annuity is acquired only in proportion to the number of days the person for whose lifetime the annuity was constituted has lived. But if it has been agreed that the annuity is to be paid in advance, each periodical payment belongs in full to the beneficiary from the date the payment should have been made.

**2116 [2082].** The beneficiary who demands the payment of an annuity past due must prove the existence of the person for whose lifetime the annuity was constituted. Evidence of any kind is admissible on this point.

**2117 [2083].** The obligation to pay a life annuity is extinguished by the death of the person for whose lifetime it was constituted.

**2118 [2084].** When the life annuity is constituted in favor of two or more persons who are to receive the annuity simultaneously, the part of the annuity to which each of the beneficiaries is entitled must be stated, and whether the surviving beneficiary has the right of accretion or not. In the absence of a declaration it is understood that they are entitled to the annuity in equal parts, and that it ceases in relation to each of the beneficiaries who dies.

**2119 [2085].** When the life annuity is constituted for the lifetime of two or more persons, in favor of the person who gives the price thereof, or of a third person, the full annuity is payable until the death of all the persons for whose lifetime it was constituted.

**2120 [2086].** When the beneficiary of an annuity constituted for the lifetime of a third person, dies before the latter, the annuity passes to his heirs until the death of the third person.

**2121 [2087].** If the debtor of a life annuity does not furnish all the securities which he has promised, or if those he has given have diminished in value through some act of his, the beneficiary may bring an action for the resolution of the contract and the return of the price of the annuity.

**2122 [2088].** A failure to pay the installments does not authorize the beneficiary to bring an action for the resolution of the contract, if it does not contain an avoidance clause. He only has a right to bring an action to recover payment of each of the unpaid installments, as any debtor of a sum of money may be proceeded against.

### TITLE XIII. OF EVICTION.<sup>61</sup>

**2123 [2089].** A person who has transferred rights, or divided property with others, under an onerous title, is answerable for eviction in the cases and modes set forth in this Title.

**2124 [2090].** A person who has conveyed mortgaged immovables under an onerous title, or divided them with another, is likewise answerable if the grantee or coparcener cannot retain them without paying the mortgage creditor.

**2125 [2091].** There is eviction by virtue of a judgment on account of a cause prior to or contemporaneous with the acquisition, if the grantee under an onerous title is deprived in whole or in part of the right which he acquired, or suffers a disturbance in his right of ownership, enjoyment, or possession of the thing. But no guaranty lies, either by reason of disturbances caused by third persons performing improper acts without claiming any right, or disturbances due to judicial or extrajudicial proceedings instituted by third persons claiming some right arising out of the law, or established in an apparent manner by the act of man, or due to claims advanced under a real or personal right of enjoyment, the existence of which was known at the time of the alienation.

<sup>61</sup> The official edition of the Code contains the following note, which is transcribed here as showing the meaning of this term as employed herein:

"The word *eviction* in its etymological acceptance, expresses the idea of a dispossession as a consequence of a judicial decision. But for a long time the word *eviction* has ceased to have in science and in practice the limited acceptance which it formerly had, and is employed on the contrary, in a broader sense to denote any kind of loss, disturbance, or damage, suffered by the person who has acquired a thing. (Demolombe, vol. 17, sec. 333)."

**2126 [2092].** Even in the absence of a judicial decision declaring the eviction, the indemnity granted therefor to the person defeated lies if the right granted was acquired under a title independent of the alienation made.

**2127 [2093].** The eviction is partial when the grantee is deprived by a judgment of a part of the thing acquired, or of its accessories or appurtenances, or if he is deprived of one of the things which he acquired collectively, or if he is deprived of some active servitude of the immovable, or if it is held that such immovable was subject to some passive servitude or to some other obligation inherent in said immovable.

**2128 [2094].** Eviction is present when an act of the Legislative Power, or of the Executive Power, deprives the grantee under a pre-existing right; but eviction is not present, if the act which deprives the grantee of his right is not based on a pre-existing right, or on a previous prohibition, which it is incumbent on the sovereign to declare, or enforce respect for.

**2129 [2095].** When the right which has caused the eviction is acquired subsequently to the transfer of the thing, but had its origin prior thereto, the judges are authorized to weigh all the circumstances and decide the question.

**2130 [2096].** The rights given by eviction may be exercised, whether the person defeated should himself be the possessor of the thing, or whether the eviction takes place with respect to a third person, to whom he has transferred the right under an onerous title, or under a lucrative title. The third person may, in his own name, exercise against the first grantor the rights which the eviction gives, even though he cannot do so against the person who transferred the right to him.

**2131 [2097].** The liability which eviction carries with it arises even though there be no agreement thereon in the instruments whereby the rights were transferred.

**2132 [2098].** The parties may nevertheless increase, reduce or suppress the obligation arising out of the eviction.

**2133 [2099].** Any agreement relieving the grantor of being answerable for the eviction is void, if there has been bad faith on his part.



**2134 [2100].** The exclusion or waiver of any liability does not discharge the liability for the eviction, and the person defeated shall have the right to recover the price he paid the grantor, but not damages.

**2135 [2101].** The following cases are excepted from the provisions of the foregoing article:

1. If the grantor expressly excluded his liability to return the price; or if the grantee expressly waived his right of action to recover it.

2. If the grant was made at the risk of the grantee.

3. If at the time of the grant, the grantee knew or should have known of the danger of the eviction occurring, and nevertheless waived the liability of the grantor, or consented to its exclusion.

**2136 [2102].** A waiver of the liability for eviction leaves in force the obligation of the grantor on account of any eviction due to a prior or subsequent act of his.

**2137 [2103].** The grantee is entitled to indemnity when he is compelled to suffer concealed charges, of the existence of which the grantor did not inform him, and of which he had no knowledge.

**2138 [2104].** The apparent charges, and those which encumber the thing by the mere force of law, do not give rise to any indemnity in favor of the grantee.

**2139 [2105].** When the grantor has declared the existence of a mortgage on the immovable alienated, such declaration imports a stipulation not to give any indemnity whatsoever on account of said encumbrance. But if the deed of conveyance contains a promise of guaranty, the grantor is answerable for eviction.

**2140 [2106].** When the grantee was aware in any manner whatsoever of the danger of eviction before the grant, he cannot claim anything of the grantor on account of the effects of the eviction which may take place, in the absence of an express stipulation to that effect.

**2141 [2107].** The obligation which arises out of the eviction is indivisible, and may be made the subject of an action and set up against any of the heirs of the grantor; but a

judgment rendered against the heirs of the grantor as to the restitution of the price of the thing, or the payment of the damages caused by the eviction is divisible among them.

**2142** [2108]. The grantor must come to the defense of the grantee, if vouched to warranty by the latter within the term which the law of procedure prescribes, in case a third person sues him to recover the ownership or possession of the thing, the exercise of a servitude or any other right comprised in the grant, or disturbs him in the use of the ownership, enjoyment, or possession of the thing.

**2143** [2109]. The grantee of the thing is not obliged to vouch the grantor to warranty when there have been other intermediate grantees. He may vouch the original grantor or any of the intermediate grantors.

**2144** [2110]. The obligation arising out of the eviction is discharged if the person defeated in court did not vouch the grantor to warranty, or if the voucher issued after the time prescribed by the law of procedure.

**2145** [2111]. The provisions of the foregoing article do not apply, and the grantor is answerable for the eviction, if the person defeated in court proves that it would have been useless to vouch him as there was no just opposition to set up against the plaintiff. The same shall be observed if the grantee, without vouching the grantor to warranty, acknowledges the justice of the action, and is for this reason deprived of the right acquired.

**2146** [2112]. The obligation arising out of the eviction is discharged also if the grantee, continuing the defense of the action, failed, with dolus or negligence, to set up the proper defenses, or if he failed to appeal from the judgment rendered in the first instance, or did not prosecute the appeal. The grantor, nevertheless, is answerable for the eviction if the party defeated proves that it would have been useless to appeal or to prosecute the appeal.

**2147** [2113]. The obligation on account of the eviction is also discharged, if the grantee, without the consent of the grantor, submits the matter to arbitration, and the arbitrators hold against the right acquired.

**2148** [2114]. When payment has been made by delivery of property, without reviving the extinguished obligation, the eviction has the same effects as between purchaser and vendor.

**2149** [2115]. In transactions,<sup>62</sup> the eviction has the same effects as between purchaser and vendor with respect to the rights not comprised in the controversy the subject of the transaction; but not as to the litigious or doubtful rights which one of the parties has recognized in favor of the other.

**2150** [2116]. In the cases not provided for in the following chapters, eviction has the same effects as in the cases to which it bears the greatest analogy.

**2151** [2117]. When the grantee wins the action from which eviction might have resulted, he shall have no right of action against the grantor, not even to recover the expenses which he has incurred.

## CHAPTER I.

### Of Eviction between Purchaser and Vendor.

**2152** [2118]. Eviction having taken place, the vendor must return to the purchaser the price received by him, without interest, even though the thing has diminished in value, or has been damaged or lost in part, by a fortuitous event or the fault of the purchaser.

**2153** [2119]. The vendor is also bound to pay the costs of the contract, the value of the fruits, when the purchaser is compelled to return them to the real owner, and the damages which the eviction causes him.

**2154** [2120]. The vendor also owes the purchaser the amount of the expenses incurred on repairs or improvements not of a necessary character, when he does not receive any indemnity from the party who has defeated him, or only a partial indemnity.

<sup>62</sup> See note to Art. 758 [724].

**2155** [2121]. The measure of the damages sustained on account of the eviction is determined by the difference between the price of the sale and the value of the thing on the day of the eviction, if the increase thereof was not due to extraordinary causes.

**2156** [2122]. In forced sales made by judicial authority, the vendor is not bound in the event of eviction, except to return the price which the sale brought.

**2157** [2123]. A vendor in bad faith who knew, at the time of the sale, of the danger of the eviction, owes, at the option of the purchaser, either the amount representing the greater value of the thing, or the return of all the sums expended by the purchaser, even though they were expenditures for purposes of luxury or mere pleasure.

**2158** [2124]. The vendor has the right to retain out of the amount payable by him, the sum which the purchaser received from the person who defeated him for improvements made by the vendor before the sale, and that which he obtained for the damages to the thing purchased.

**2159** [2125]. In case of partial eviction, the purchaser may elect between suing for an indemnity in proportion to the loss suffered, or demanding the rescission of the contract, when the part of which he has been deprived or the resulting charge or servitude is of such importance as to the whole, that without it he would not have purchased the thing.

**2160** [2126]. The same provision shall apply when two or more things have been bought jointly, if it should appear that the purchaser would not have bought one without the other.

**2161** [2127]. In the event of partial eviction, and when the contract is not rescinded, the indemnity for the eviction suffered is determined by the value at the time of the eviction of the part of which the purchaser has been deprived, if not lower than that which would be due proportionately, with respect to the total price of the thing purchased. If it is lower, the indemnity shall be in proportion to the purchase price.

## CHAPTER II.

### Of Eviction between Parties to an Exchange.

**2162** [2128]. In the event of total eviction, the party to the exchange who has been defeated has the right either to annul the contract and recover the thing which he gave in exchange, with the indemnities established with respect to a defeated grantee as to the thing or right acquired, or recover payment of the value thereof with the damages caused him by the eviction. The value in such case shall be determined by the value of the thing at the time of the eviction.

**2163** [2129]. If he should elect in favor of the annulment of the contract, the other party to the exchange who received the thing shall return it in the condition in which it is, as a possessor in good faith.

**2164** [2130]. If the thing was alienated under an onerous title by the party to the exchange who received the thing, or if he constituted some real right therein, the other party to the exchange does not have any right of action whatsoever against the third grantees; but if it was alienated under a gratuitous title, the latter may demand from the grantee thereof, either the value of the thing or its return.

**2165** [2131]. In the event of partial eviction, the provisions contained in the preceding chapter regarding partial eviction in a contract of sale are applicable.

## CHAPTER III.

### Of Eviction among Partners.

**2166** [2132]. A partner who has contributed to the partnership a certain thing, is liable in the event of eviction for indemnity for the damages<sup>63</sup> which the partnership or the other partners may sustain.

<sup>63</sup>*Pérdidas é intereses.* See Art. 1103 [1060].

**2167 [2133].** If the partnership is dissolved by reason of the eviction, the partner responsible shall pay the indemnity due the partnership for the damages<sup>64</sup> which the dissolution has caused it.

If the partnership is continued, the partner responsible shall pay the full value of the thing, or of that part of which the partnership has been deprived, and in addition:— 1. The expenses which the partnership incurred in receiving or transporting the goods of which it has been deprived. 2. The costs of the litigation with the successful party. 3. The value of the fruits which the partnership was obliged to pay the successful litigant.

**2168 [2134].** Partners shall not have the right to continue in the partnership by compelling the partner responsible to substitute in the place of the property of which it has been deprived, other property exactly similar thereto.

**2169 [2135].** If the prestation<sup>65</sup> of the partner of which the partnership has been deprived consists of movable or immovable things destined to be sold, the partner responsible is empowered to replace them by others exactly like them.

**2170 [2136].** But if the prestation of which the partnership has been deprived consists of a specific thing, subject to a special use under the contract of partnership, the partner responsible does not have the right to compel the other partners to accept the substitution in the place of the thing sold of another exactly like it.

**2171 [2137].** If the prestation of the partner consists of the usufruct of real property, the eviction binds him as the vendor of fruits, and he shall pay to the partnership what the right of usufruct may be held to have been worth.

**2172 [2138].** If the prestation consisted of the use of a thing, the partner who granted it is not liable for the eviction, unless at the time of the contract he knew that he did not have the right to grant the use thereof. He must, nevertheless, be treated as a partner who has failed to contribute the thing which he has promised.

<sup>64</sup> *Pérdidas é intereses.* See Art. 1103 [1069].

<sup>65</sup> See footnote on p. 93.

**2173** [2139]. If the prestation of the partner consisted of credits, the partner responsible is answerable to the partnership for the eviction, as if he had received the value of the credits.

## CHAPTER IV.

### Of Eviction among Coparceners.

**2174** [2140]. The provisions relating to grantors and grantees in general, are applicable to eviction among coparceners.

**2175** [2141]. In the event of eviction of the property divided on account of a cause prior to the division, each of the coparceners is liable for the corresponding indemnity, in proportion to his share, the coparcener defeated bearing the share falling to him.

**2176** [2142]. In all cases in which the coparceners owe indemnity to one of them on account of eviction, if any of them is insolvent, the payment of his portion of the indemnity shall be divided among all of them.

**2177** [2143]. None of the coparceners is released from the payment of the indemnity on account of the loss, by a fortuitous event, of the portion given him in the division.

**2178** [2144]. The amount of the indemnity shall be the value of the property at the time of the eviction. If there are any credits, the nominal value thereof in the partition will be the subject of the indemnity. But the liability for the credits shall lie only when the debtor is insolvent at the time of the division.

## CHAPTER V.

### Of Eviction between Donors and Donees.

**2179** [2145]. In the event of eviction of a thing donated, the donee has no remedy whatsoever against the donor, not

even for the expenses incurred by him in connection with the donation.

**2180 [2146].** The following cases are excepted from the provisions of the preceding article:

1. When the donor has expressly promised to guarantee the donation.

2. When the donation was made in bad faith, the donor knowing that the thing belonged to another.

3. When it was a donation subject to charges.

4. When the donation was remuneratory.

5. When the cause of the eviction is the non-performance by the donor of an obligation which he assumed in the instrument of the donation.

**2181 [2147].** When the donation was made in bad faith, the donor must indemnify the donee for all the expenses which the donation caused him to incur.

**2182 [2148].** The donee in the case of the preceding article has no right of action whatsoever against the donor, if he knew at the time of the donation that the thing donated belonged to another.

**2183 [2149].** In donations subject to charges, the donor is answerable for the eviction of the thing in proportion to the amount of the charges, and the value of the property donated, whether the charges are established in the interest of the donor himself, or for the benefit of a third person, or whether the eviction be total or partial.

**2184 [2150].** In remuneratory donations, the donor is answerable for the eviction in proportion to the value of the services received from the donee, and to that of the property donated.

**2185 [2151].** It is considered that the cause of the eviction was the non-performance of the obligation contracted by the donor, when he failed to pay the mortgage debt upon the immovable donated, having relieved the donee of the payment thereof. If the donee pays the mortgage debt in order to retain the immovable donated, he is subrogated to the rights of the creditor against the donor.



**2186 [2152].** When the object of the donation is two or more things of the same kind, under an alternative, or one thing which the donee is to take from among a number of the same species, and the thing delivered to him is taken from him under a judgment, the donee has the right to demand that the donation be carried out from the other things.

**2187 [2153].** The donee of a thing which is specific only as to its species, and who is ejected therefrom by a judgment, is entitled to the delivery of another of the same species.

**2188 [2154].** A donee who has been defeated has the right, as the representative of the donor, to bring an action on account of the eviction against the grantor from whom the donor received the thing under an onerous title, even though the latter has not expressly assigned his rights to him.

## CHAPTER VI.

### Of Eviction between Assignees and Assignors.

**2189 [2155].** Eviction between assigness and assignors comprises the eviction of rights given in payment, remitted or awarded, and the credits transmitted under legal subrogation.

**2190 [2156].** The provisions relating to eviction between parties to an exchange apply to the eviction of rights assigned in consideration of things of value or other rights.

**2191 [2157].** The provisions regarding donations of the same character are applicable to the eviction of rights assigned gratuitously, or in remuneration of services or for charges imposed in the assignment.

**2192 [2158].** In the event of the total or partial eviction of the right assigned, the assignor is liable, as provided with regard to a vendor, when the purchaser is defeated in an action involving the thing purchased.

**2193 [2159].** If the assignment is of specific rights, income or products transferred in their totality, the assignor is liable only for the eviction of all in general, and is not bound to

warranty for each of the parts of which it consists, unless the eviction is of the greater part.

**2194 [2160].** In the assignment of an inheritance, the assignor is only liable for the eviction which excluded his condition of heir, and not for that of the property of which the inheritance consisted. His liability shall be determined in the same manner as that of a vendor.

**2195 [2161].** If the hereditary rights are litigious,<sup>66</sup> or are assigned as doubtful, the assignor is not liable for eviction.

**2196 [2162].** If the assignor knew positively that the inheritance did not belong to him, even though the assignment of his rights was made as uncertain or doubtful, the exclusion of his condition of heir obliges him to return to the assignee whatever he received from him, and to indemnify him for all the damages which he has sustained.

**2197 [2163].** If the assignor assigned the hereditary rights, without having warranted the assignee against the eviction which he suffered, the latter has the right to recover what he gave therefor; but he is discharged from the obligation to pay damages.

#### TITLE XIV. OF REDHIBITORY VICES.

**2198 [2164].** Redhibitory vices are the concealed defects of the thing, the ownership, use or enjoyment of which has been transferred under an onerous title, existing at the time of the grant thereof, which render it unsuitable for its purpose, if they diminish the use thereof to such an extent that had the grantee known them, he would not have acquired it or would have given less therefor.

**2199 [2165].** The rights of action which this title grants on account of the redhibitory vices of the things acquired, do not include grantees under a gratuitous title.

<sup>66</sup> The Lajouane edition (1906) of the Civil Code, contains the following note: The official edition employs the word *legitimate*, which we assume to be an error as this article is taken from Freitas (Art. 3568, sec. 3), which uses the word *litigious*.

**2200** [2166]. The parties may restrict, renounce, or increase their liability for redhibitory vices, in the same manner as liability for eviction, if there is no dolus on the part of the grantor.

**2201** [2167]. Vices which are not naturally such may be made redhibitory vices by the contract, when the grantor guarantees their non existence, or the quality of the thing supposed by the grantee. This guaranty takes place even though not expressed, when the grantor positively affirmed in the contract, that the thing was free from defects, or that it had certain qualities, even though it should be easy for the grantee to ascertain the defect or the lack of quality.

**2202** [2168]. The burden of the proof of the existence of the vice at the time of the acquisition is on the grantee, and if he fails to prove it, the vice is considered to have arisen subsequently.

**2203** [2169]. A stipulation in general terms that the grantor does not answer for the redhibitory vices of the thing, does not relieve him of liability for a redhibitory vice of which he had knowledge, and of which he failed to advise the grantee.

**2204** [2170]. The grantor is also relieved of liability for the redhibitory vices, if the grantee knew of them, or should have had knowledge thereof on account of his occupation or trade.

**2205** [2171]. He is likewise exempt from liability on account of the redhibitory vices if the grantee obtained the thing at a public sale, or by judicial award.

**2206** [2172]. Between grantors and grantees who are not vendors and vendees, the redhibitory vice of the thing acquired gives rise only to a redhibitory action, but not to an action the purpose of which is to obtain a reduction of the amount paid to the extent of the reduced value of the thing.

**2207** [2173]. Between purchasers and vendors, in the absence of a stipulation as to redhibitory vices, the vendor must warrant the purchaser against the hidden vices or defects of the thing even though he is not aware thereof; but he is not bound to answer for the apparent vices or defects.

**2208** [2174]. In the case of the preceding article, the purchaser may bring a redhibitory action for the avoidance of the contract, and return the thing to the vendor, the latter returning the price paid, or an action for the reduction of the price to the extent of the reduced value of the thing due to the redhibitory vice.

**2209** [2175]. The purchaser may bring either action, but he shall not have the right to bring one of them, after having been defeated in or having sought to bring the other.

**2210** [2176]. If the vendor knew or should have known, by reason of his occupation or trade, of the hidden vices or defects of the thing sold, and failed to notify the purchaser thereof, the latter has in addition to the actions stated in the foregoing articles, a right to indemnity for the damages sustained, if he elects in favor of the rescission of the contract.

**2211** [2177]. When two or more things are sold, whether for a lump sum, or by giving a price to each, the redhibitory vice of one of them gives rise only to its redhibition, and not to that of the others, unless it is shown that the purchaser would not have purchased the sound one without that containing the vice, or when the sale is of a flock or herd, and the vice is contagious.

**2212** [2178]. If the thing is lost on account of the redhibitory vices, the vendor shall bear the loss and must return the price. If the loss is partial, the purchaser must return it in the condition in which it is in order to recover the price paid by him.

**2213** [2179]. If the thing sold with redhibitory vices is lost by reason of a fortuitous event, or by the fault of the purchaser, the latter retains nevertheless the right to demand the return of the amount whereby the value of the thing has been reduced by the redhibitory vice.

**2214** [2180]. The provisions relating to the redhibitory action between purchaser and vendor, apply to acquisitions under deliveries in payment, under innominate contracts, under sales at auction or allotments, when not by virtue of a judicial decision, in exchanges, in donations, in cases in which eviction lies, and in partnerships, giving in the latter case a right to the

dissolution of the partnership, or the exclusion of the partner who contributed the thing having redhibitory vices.

**2215 [2181].** A redhibitory action is indivisible. None of the heirs of the grantee can bring such an action in order to recover his share alone; but each of the heirs of the grantor may be sued.

## TITLE XV. OF DEPOSIT.

**2216 [2182].** A contract of deposit takes place, when one of the parties obligates himself to keep gratuitously a movable or immovable thing which the other entrusts to him, and to return the same and identical thing.

**2217 [2183].** Any compensation spontaneously offered by the depositor to the depositary, or the grant to the latter of the use of the thing at the time of the execution of the contract, or after its execution, does not deprive the deposit of its gratuitous character.

**2218 [2184].** An error as to the personal identity of either contracting party, or as to the substance, quality or amount of the thing deposited, does not invalidate the contract. If the depositary, nevertheless, has erred as to the person of the depositor, or discovers that the care of the thing deposited will cause him some risk, he may immediately return the deposit.

**2219 [2185].** The provisions of this title apply only to a conventional deposit, and not to deposits arising out of some cause other than a contract.

As to everything respecting the effects of a deposit, the provisions of this Title govern subsidiarily in so far as applicable:

1. To a deposit made by virtue of dispositions of last will.
2. To a judicial deposit by virtue of an attachment, pledge, etc.
3. To the deposit of the estates of bankrupts governed by the commercial laws.

4. To deposits in public depositories or banks, to which the special laws governing them must be first applied.

**2220** [2186]. There is no deposit without a contract, law or judicial order authorizing it. A person who assumes to hold a thing belonging to another, is not considered the depositary thereof, and is subject to the provisions of this Code regarding possessors in bad faith.

**2221** [2187]. A deposit is voluntary or necessary. It is voluntary when the election of the depositary is dependent solely on the will of the depositor; and necessary, when made on the occasion of some disaster, such as fire, collapse, pillage, shipwreck, or other similar disasters, or of effects brought into houses provided for the reception of travelers.

**2222** [2188]. A voluntary deposit is regular or irregular.

It is regular:

1. When the thing deposited is an immovable or a movable which is not consumable, even though the depositor has granted the depositary the use thereof.

2. When it is money, or an amount of consumable things, if the depositor delivered them to the depositary in a bag or box under lock and key, without delivering the latter to him; or when it is a sealed package, or one bearing some mark of identification.

3. When it represents a credit of money, or of an amount of consumable things, if the depositor did not authorize the depositary to collect it.

4. When it represents the title to a real right, or a credit other than money.

**2223** [2189]. It is irregular:

1. When the thing deposited is money, or an amount of consumable things, if the depositor allows the depositary the use thereof or delivers them to him without the precautions set forth in subdivision 2 of the preceding article, even though he does not grant him such use or prohibits him to make such use.

2. When it represents a credit of money, or of an amount of consumable things, if the depositor authorized the depositary to collect it.

## CHAPTER I.

### Of Voluntary Deposit.

**2224** [2190]. A contract of deposit is a real contract, and is not considered as perfected without the tradition of the thing deposited.

**2225** [2191]. If the deposit is a regular one, the depositary acquires the mere tenancy of the thing only. If irregular, the thing deposited passes to the ownership of the depositary, unless it consists of a credit of money or of an amount of consumable things, which the depositor has not authorized the depositary to collect for him.

**2226** [2192]. An essential element to the validity of a contract of deposit is the capacity on the part of the depositor and depositary to contract.

**2227** [2193]. Nevertheless, if a person capable of contracting accepts a deposit made by another person who is incapable, he becomes subject to all the obligations of a real depositary and may be sued under the rights of the depositor for the performance of his obligations as a depositary, by the tutor, the curator, or the administrator of the property of the person who made the deposit, or by the depositor himself if he recovers his capacity.

**2228** [2194]. If the deposit has been made by a person having the necessary capacity, with one who has not, the depositor shall only have a right of action to recover the thing deposited as long as it remains in the possession of the depositary, and the right to recover from the incapacitated person anything whereby he has enriched himself by the deposit.

**2229** [2195]. An incapacitated person who has accepted a deposit from another capable or incapable person may, if an action is brought against him for damages on account of not having devoted the proper care to the preservation of the thing deposited, plead in answer the nullity of the contract; but he cannot set up his incapacity as a defense against an action for the restitution of the thing deposited.

**2230** [2196]. An incapacitated person who has made a deposit, may be discharged from the obligations which the contract would have imposed upon him if the deposit were valid; but he shall always be subject to the rights of action of unauthorized agents (*gestores de negocios*) if, as a consequence of the deposit, the depositary, acting in an advantageous manner, incurred some expense in the preservation of the thing.

**2231** [2197]. The deposit may be made only by the owner of the thing, or by another with the owner's express or implied consent.

**2232** [2198]. A deposit made by the possessor in good faith of the thing, is valid as between the depositor and the depositary.

**2233** [2199]. A person who receives a thing on deposit as the property of the depositor, knowing that it does not belong to him, cannot bring any action against the owner on account of the deposit, nor can he retain the thing deposited until the disbursements made by him have been repaid him.

**2234** [2200]. The validity of a contract of deposit is not subject to the observance of any particular formality.

**2235** [2201]. A contract of deposit cannot be proved by parol evidence, unless the value of the thing deposited does not exceed two hundred *pesos*. If it exceeds said sum, and there is no written evidence of the deposit, the declaration of the person sued as a depositary shall be accepted both as to the fact of the deposit and the identity of the thing and its return.

## CHAPTER II.

### Of the Obligations of the Depositary in a Regular Deposit.

**2236** [2202]. The depositary is obliged to bestow the same attention to the care of the thing deposited as he would to his own.



**2237** [2203]. The depositary is not liable for events of *force majeure* or of a fortuitous character, unless he has assumed the risk of fortuitous events or cases of *force majeure*, or when such events are due to his fault, or when he has delayed the return of the thing deposited.

**2238** [2204]. It is the obligation of the depositary to inform the depositor of the measures and expenditures necessary to preserve the thing, and to defray the urgent expenses, which shall be borne by the depositor. If he fails to comply with these obligations, he shall be liable for the damages which his omission causes.

**2239** [2205]. The obligation of the depositary to keep a sealed box or package includes that of not opening it, if not authorized to do so by the depositor.

**2240** [2206]. This authorization in a necessary case is presumed when the key to the locked box has been entrusted to the depositary; and when the orders of the depositor with respect to the deposit cannot be carried out without opening the box or package deposited.

**2241** [2207]. If by the express or presumed authorization of the depositor, or through any other event, the depositary ascertains the contents of the deposit, he is obliged not to divulge the secret, under the penalty of being liable for any damage which he may cause the depositor, unless secrecy should expose him to fines or penalties on account of the character of the thing deposited.

**2242** [2208]. The deposit does not transfer to the depositary the use of the thing. He cannot make use of the thing deposited without the express or presumed permission of the depositor.

**2243** [2209]. If the depositary makes use of the thing deposited without the consent of the depositor, he is liable for the rental thereof from the date of the contract, as a lessee, or he shall pay interest at the legal rate as a borrower in a contract of mutuum under an onerous title, according to the character of the thing deposited.

**2244** [2210]. The depositary must return the identical thing deposited in its original condition with all of its acces-

sions and fruits, and in the state in which it is, without being liable for the deteriorations it has suffered without his fault.

**2245** [2211]. The depositary must make the restitution to the depositor, or to the person designated to receive the deposit, or to his heirs. If the deposit has been made in the name of a third person, it must be returned to such person or to his heirs. If the depositor, or the person entitled to receive the deposit, has died, it must be returned to his heirs, if all of them agree to receive it. If the heirs do not agree to receive the deposit, the depositary must place it at the disposition of the judge of the succession. The same must be observed when there are two or more depositors, and they do not agree to receive the deposit.

**2246** [2212]. The heirs of the depositary who have sold a movable thing in good faith in ignorance of the fact that it was held on deposit, can be compelled to return only the price received by them.

**2247** [2213]. If the deposit was made by a tutor or the administrator of another's property, as such, it can be returned, after the administration, only to the person whom the depositor represented.

**2248** [2214]. If the depositor has lost the administration of his property, the return must be made to the person to whom the administration of such property has passed.

**2249** [2215]. The depositary cannot compel the depositor to prove his ownership of the thing deposited. Nevertheless, if he discovers that the thing has been stolen, and who the owner thereof is, he must advise the latter of the deposit in order that he may claim it within a brief period. If the owner fails to do so, the depositary must deliver the deposit to the depositor.

**2250** [2216]. The depositary must return the thing deposited at the place where the deposit was made. If some other place has been designated in the contract, he must take the thing to said place, the expense of transporting it thereto being borne by the depositor.

**2251** [2217]. Even when a term has been stipulated for the return of the deposit, this term is always in favor of the

depositor, and he may claim the deposit before the time stipulated.

**2252 [2218].** The depositary has the right to retain the thing deposited until full payment of what is due him by reason of the deposit; but not for the payment of the compensation offered him, nor for the damages which the deposit have caused him, nor any other cause foreign to the deposit.

**2253 [2219].** The depositary cannot set off the obligation to return a regular deposit against any credit, nor against another deposit he has made with the depositor, even though of a larger sum or of a thing of greater value.

### CHAPTER III.

#### Of the Obligations of the Depositary in an Irregular Deposit.

**2254 [2220].** If the deposit is irregular, of money, or of some other amount of things, the use of which the depositor has granted the depositary, the latter is obliged to pay a sum equal to that deposited, in a lump and not in parts, or to deliver an equal amount of the things deposited, provided they are of the same species.

**2255 [2221].** The presumption is that the depositor granted the depositary the use of the deposit, if it does not appear that he prohibited its use.

**2256 [2222].** If the use of the deposit was prohibited and the depositary delays delivering it, he shall owe interest from the date of the deposit.

**2257 [2223].** The depositary may retain the deposit to offset a concurrent amount which the depositor owes him on account of another deposit; but if the credit has been assigned, the assignee cannot attach the amount deposited in the possession of the depositor.

## CHAPTER IV.

### Of the Obligations of the Depositor.

**2258** [2224]. The depositor is obliged to reimburse the depositary all the expenses incurred by him in the preservation of the thing deposited, and to indemnify him for all the damages which the deposit has caused him,

## CHAPTER V.

### Of the Termination of Deposit.

**2259** [2225]. A voluntary deposit is not resolved, either by the death of the depositor, or the death of the depositary.

**2260** [2226]. A deposit terminates:

1. If contracted for a specified time, upon the expiration of such time. If contracted for an indeterminate period, at the will of either of the parties.
2. By the loss of the thing deposited.
3. By the alienation by the depositor of the thing deposited.

## CHAPTER VI.

### Of Necessary Deposits.

**2261** [2227]. A necessary deposit is one caused by fire, destruction, pillage, shipwreck, the incursion of enemies; or by other events of *force majeure*, subjecting the persons to a peremptory necessity; and that of effects brought into inns by travellers.

**2262** [2228]. A necessary deposit on the occasion of danger or *force majeure*, may be made with adult persons, even though

incapable under the law, and such persons are answerable for the deposit, even though not authorized by their representatives to receive it.

**2263 [2229].** A deposit made in inns takes place upon the introduction therein of the effects of travelers, even though they have not been expressly delivered to the innkeeper or his employees, and even though the former hold the keys of the rooms where the effects are.

**2264 [2230].** The innkeeper and all persons whose occupation consists of giving lodging to travelers are answerable for any damage or loss suffered by effects of any class brought into inns, whether through the fault of their employees or of the persons themselves who take lodging in the house; but they are not answerable for damages or theft by the members of the household or visitors of the travelers.

**2265 [2231].** The innkeeper is responsible for the vehicles and effects of any kind which have entered the appurtenances of the inns.

**2266 [2232].** The innkeeper does not exempt himself from the liability imposed upon him by the laws of this Chapter by posting notices announcing that he is not responsible for the effects brought by travelers; and any agreement which he makes with them on the matter in order to limit his liability is void.

**2267 [2233].** The liability imposed upon innkeepers does not extend to the managers of restaurants, cafés, bathing and other similar establishments, nor to travelers entering inns without taking lodging therein.

**2268 [2234].** Nor does it apply to the lessees of rooms or individuals who are not travelers, or who are not there as guests, nor to persons who are living or able to live in towns, and rent rooms in inns as lessees.

**2269 [2235].** A traveler who brings with him effects of great value, of a character which travellers do not usually carry with them, must notify the innkeeper thereof, and even show them to him if he requires it, and if he fails to do so, the innkeeper shall not be responsible for their loss.

**2270 [2236].** An innkeeper is not responsible when the

damage or loss is due to *force majeure*, or to the fault of the traveler.

**2271 [2237].** The entrance of thieves into an inn does not constitute *force majeure*, unless they do so with the use of arms, or by a breaking in which the innkeeper can not resist.

**2272 [2238].** Proof of any kind is admissible in necessary deposits.

**2273 [2239].** In all other respects a necessary deposit is governed by the provisions relating to voluntary deposits.

## TITLE XVI. OF MUTUUM OR LOAN FOR CONSUMPTION.

**2274 [2240].** There is mutuum or a loan for consumption when one party delivers to the other an amount of things which the latter is authorized to consume, returning to him at the time stipulated an equal amount of things of the same species and quality.

**2275 [2241].** The thing delivered by the lender to the borrower must be consumable, or fungible, even though not consumable.<sup>67</sup>

**2276 [2242].** Mutuum is an essentially real contract, which is perfected only by the delivery of the thing.

**2277 [2243].** Mutuum may be gratuitous or onerous.

**2278 [2244].** An accepted promise to make a gratuitous loan does not give any right of action whatever against the promisor; but an accepted promise to make an onerous loan which is not kept by the promisor, entitles the other party for a period of three months from the date it should have been performed, to bring an action against him to recover damages.<sup>68</sup>

**2279 [2245].** The thing given by the lender becomes the property of the borrower; and the loss thereof is borne by him in whatever manner it has occurred.

**2280 [2246].** A contract of mutuum may be entered into verbally; but it can be proved only by a public instrument,

<sup>67</sup> See Arts. 2358 and 2359.

<sup>68</sup> *Pérdidas é intereses.* See Art. 1103 [1069].

or by a private instrument of a date certain, if the loan exceeds the value of two hundred *pesos*.

**2281** [2247]. The lender is responsible for the loss which the borrower suffers on account of the bad quality or concealed vices of the thing loaned.

**2282** [2248]. In the absence of an express agreement regarding interest, the loan for consumption is supposed to be gratuitous, and the lender may demand only interest on account of delay, or damages<sup>69</sup> on account thereof.

**2283** [2249]. If the borrower has paid interest when no interest had been stipulated, he is not obliged to continue paying it thereafter.

**2284** [2250]. The borrower must return to the lender, within the term agreed on, an amount of similar things of the same species and quality as those received.

**2285** [2251]. When it is not possible to return a similar quantity of the same species and quality as that received, the borrower must pay the price of the thing or quantity received, to be governed by the price of the thing loaned at the place and time the restitution is to be made.

**2286** [2252]. If the restitution which the borrower is to make consists of the payment of a sum of money, his obligations shall be governed by the provisions of Chapter IV of the Title *Of Obligations to Give*.

**2287** [2253]. If the restitution consists of the delivery of amounts other than money, his obligations shall be governed by the provisions of Chapter III of said Title.

**2288** [2254]. If the restitution consists of the delivery of things which are not consumable, loaned as fungible, the obligations of the borrower shall be governed by the provisions of Chapter II of the same Title.

## TITLE XVII. OF COMMODATUM.

**2289** [2255]. There is commodatum or a loan for use when one of the parties delivers to the other gratuitously a

<sup>69</sup> See preceding note.

thing which is not fungible, either movable or real, with the right to use it.

**2290 [2256].** Commodatum is a real contract which is perfected by the delivery of the thing. A promise to make a loan for use does not give any right of action against the promisor.

**2291 [2257].** If the lender is incapable of contracting, or is subject to some temporary incapacity, he may bring an action against the borrower, whether capable or not, for the annulment of the contract, and demand the return of the thing before the time stipulated; but a borrower having sufficient capacity cannot set up against him the nullity of the contract.

**2292 [2258].** A lender who has sufficient capacity cannot bring an action for the annulment of the contract against an incapable borrower; but an incapable borrower may set up the nullity of the contract against the lender, whether capable or not.

**2293 [2259].** If the incapable borrower is not an impuberal minor, and has by *dolus* induced the other party to contract with him, his incapacity does not authorize him to annul the contract, and he must return the thing loaned, as if he were capable.

**2294 [2260].** When the object of the loan is consumable things, it is a loan for use only if they have been loaned as things not fungible, that is to say, on the condition that the identical things are to be returned.

**2295 [2261].** It is forbidden to loan anything for a use contrary to the laws or good morals, or to loan things which are out of commerce<sup>70</sup> on account of being injurious to the public welfare.

**2296 [2262].** Tutors are forbidden to lend the property of their wards, and curators the property under their administration; and in general, all administrators of the property of others, the public or private property which is entrusted to their administration, unless authorized to do so by special powers of attorney.

**2297 [2263].** No form is essential for commodatum, and any kind of evidence of the contract is admissible, even though

<sup>70</sup> See note to Art. 1535.



the thing loaned has a greater value than the value at which it is assessed by law.

**2298** [2264]. The provisions relating to the proof of leases are applicable to the proof of commodatum.

**2299** [2265]. The lender retains the ownership and civil possession of the thing. The borrower acquires only a personal right of use, and cannot appropriate the fruits nor subsequent increase of the thing loaned.

## CHAPTER I.

### Of the Obligations of the Borrower in Commodatum.

**2300** [2266]. The borrower is obliged to employ the greatest diligence in the preservation of the thing, and is liable for any deterioration it suffers through his fault.

**2301** [2267]. If the deterioration is such as to render the thing no longer susceptible of being applied to its ordinary use, the lender may demand the previous value thereof, and relinquish its ownership to the borrower.

**2302** [2268]. The borrower cannot make any other use of the thing than that stated in the contract; and in the absence of an express agreement, that to which the thing is destined, according to its nature or the custom of the country. In the event of an infringement thereof, the lender may demand the immediate return of the thing loaned, and compensation for damages.

**2303** [2269]. The borrower is not liable for fortuitous events, or cases of *force majeure*, unless these casualties have been preceded by some fault on his part, without which the damage to the thing would not have occurred; or if the thing loaned would have not been destroyed by the fortuitous event or *force majeure*, had he not employed it for some other purpose, or had he not used it for a longer time than that designated in the contract; or if, having been able to protect the thing loaned from the damage suffered, by employing his own thing,

he failed to do so; or if, not having been able to keep one of the two things, he preferred to save his own.

**2304** [2270]. The borrower is not liable for the deteriorations of the thing loaned due solely to the use thereof, or when the thing deteriorates on account of its own quality, vice or defect.

**2305** [2271]. Commodatum terminates upon the expiration of the term of the contract, or upon the conclusion of the service for which the thing was loaned, and it must be returned to the lender in the condition in which it is, with all its fruits and accessions, even though it has been given a valuation in the contract. In the absence of proof to the contrary, the presumption is that the borrower received it in good condition.

**2306** [2272]. If the heirs of the borrower have alienated the movable thing loaned in ignorance of the loan, the lender may, if he is not able or willing to bring an action of revendication, or if such action is ineffective, demand of the heirs the price received, or that they assign to him the actions vested in them by virtue of the transfer.

**2307** [2273]. If the heirs knew that the thing had been loaned, they must pay the full value of the thing and indemnify the lender for the damage; and they may even be prosecuted criminally for breach of trust.

**2308** [2274]. If the borrower does not return the thing owing to the loss thereof by his fault, or by that of his agents or employees, he shall pay the lender the value thereof. If he does not return it on account of having destroyed or dissipated it, he shall be guilty of the crime of breach of trust, and criminal proceedings may be instituted against him, before or after the civil action for the recovery of the value thereof, and indemnity for the damage caused.

**2309** [2275]. If after the borrower has paid the value of the thing, he or the lender recovers it, he shall not have the right to demand the return of the price paid and compel the lender to receive the thing. But the lender shall have the right to demand the return of the thing, and compel the borrower to receive the price paid.

**2310** [2276]. If the thing has been loaned by a person incapable of entering into a contract, who was making use thereof with the permission of his legal representative, its return to the incapacitated lender is valid.

**2311** [2277]. The borrower shall not have the right to withhold the return of the thing on the ground that the thing loaned does not belong to the lender, unless it has been lost by or stolen from the owner thereof.

**2312** [2278]. The borrower cannot retain the thing loaned for what the lender owes him, even though it be by reason of expenses.

**2313** [2279]. If a thing which has been lost or stolen has been loaned, the borrower who is aware thereof and does not denounce it to the owner, allowing him a reasonable time to claim it, is liable for the damages which the owner may sustain by its return to the lender. Nor can the owner on his part demand the return without the consent of the lender, or without a judicial decree.

**2314** [2280]. The borrower is obliged to withhold the return of any kind of offensive arms, and of any other thing of which he knows it is sought to make a criminal use; but he must place them at the disposition of the judge.

**2315** [2281]. When a number of persons have jointly borrowed the same things, they are liable *in solidum* for the return thereof or for any damages thereto.

**2316** [2282]. The borrower cannot recover the expenses incurred by him in connection with the use of the thing borrowed.

## CHAPTER II.

### Of the Obligations of the Lender in Commodatum.

**2317** [2283]. The lender must allow the borrower or his heirs to make use of the thing loaned during the time stipulated, or until the service for which it was loaned has terminated. This obligation ceases with respect to the heirs of the borrower,

when it appears that the loan was made only out of consideration to the latter, or that the borrower on account of his occupation was the only one who could make use of the thing loaned.

**2318** [2284]. If before the expiration of the period granted for the use of the thing loaned, the lender is in urgent and unforeseen need of said thing, he may demand the borrower to return it to him.

**2319** [2285]. If the loan is precarious, that is to say, if neither the duration of the *commodatum* nor the use of the thing is stipulated, and the use of the thing is not determined by the local customs, the lender may demand the return of the thing at will. In case of doubt, the burden of proof is on the borrower.

**2320** [2286]. A lender who, knowing of the concealed vices or defects of the thing loaned, did not inform the borrower thereof, is answerable to the latter for the damages which he sustains through this cause.

**2321** [2287]. The lender must pay the extraordinary expenses incurred during the term of the contract in the preservation of the thing loaned, provided the borrower notifies him thereof before incurring them, unless they were of such an urgent character that he could not give advance notice without grave risk.

## **TITLE XVIII. OF THE MANAGEMENT OF ANOTHER'S AFFAIRS** (*Negotiorum Gestio*).

**2322** [2288]. Any person having the capacity to enter into a contract who without a mandate assumes charge of the management of a transaction which bears a direct or indirect relation to the patrimony of another, whether the owner of the business be aware of the management or not, subjects himself to all the obligations which the acceptance of a mandate imposes upon the mandatary.

**2323** [2289]. In order to hold that the management of another's affairs has been undertaken, it is essential that the

manager propose to transact another's business, and eventually obligate him. An error as to the person does not deprive the act of its nature; but the management of another's affairs is not considered to have been undertaken if the manager, believing that he is transacting his own affairs, transacts the business of another, nor when his intention in conducting the business was merely to perform an act of liberality.

**2324 [2290].** After the management of the business has been begun, it is the obligation of the manager to continue and conclude the transaction, and everything connected with it, until the owner or the person interested is in a position to look after the business himself, or until his heirs can do so, if he dies during the agency.

**2325 [2291].** The manager of another's business is liable for any fault in his management, even though he devotes his customary care thereto. But he shall be obliged to devote to the management of the business only such care as he devotes to his own affairs, when he takes charge of the business in an urgent case, or to save the owner some loss if no one were to take charge of his interests, or when he does so through friendship or affection for him.

**2326 [2292].** If the manager has placed another person in charge of the management, he shall be liable for the faults of the substitute, even when he has selected a person in whom he has confidence.

**2327 [2293].** If there are two or more managers, their liability is not solidary.

**2328 [2294].** The manager is answerable even for a fortuitous event, if he has made risky transactions which the owner of the business was not in the habit of making, or if he has proceeded more in his own interest than in the interest of the owner of the business; or if he did not have the necessary qualifications to conduct the business; or if by his interference he has prevented another person better qualified from taking charge of the business.

**2329 [2295].** The manager is not liable for a fortuitous event, if he proves that the loss would have occurred anyway, even though he had not assumed charge of the business, or when the owner of the business profits by his management.

**2330 [2296].** The management does not terminate until the manager has given an accounting of his management to the owner of the business or to the person who represents him. Any kind of proof is admissible as to the management, and as to the expenses incurred in connection therewith.

**2331 [2297].** Any person, even though incapable of contracting, whose business has been attended to or managed by a third person to whom he has not given a mandate for the purpose, becomes subject to the obligations which the execution of a mandate imposes upon the principal, provided the business has been conducted in a profitable manner, even though on account of unforeseen circumstances the profit which should have been obtained was not realized, or has ceased.

**2332 [2298].** The manager may recover from the owner of the business all the expenditures incurred by him in connection with the management, with interest from the day he made them; and the owner of the business is obliged in addition to release him from or indemnify him for the personal obligations which he has contracted.

**2333 [2299].** When the business was of two or more owners, the liability is not solidary.

**2334 [2300].** The owner of the business is not obliged to pay any compensation whatsoever for the service of the management, nor to answer for the damages sustained by the manager in conducting the management.

**2335 [2301].** If the business was not undertaken in a profitable manner, or if the profit was uncertain at the time the manager undertook it, the owner, if he did not ratify the management, is liable only for the expenses and debts to the amount of the profit which he obtained upon the completion of the business.

**2336 [2302].** Even when the business has been profitably conducted, the owner is liable only to the amount of the profit upon the conclusion of the business, if he did not ratify the management, when the manager believed that he was conducting his own business; or when he made a transaction which was common to him and another, having in view his own

interest only; or if the owner of the business is a minor or incapacitated person and his legal representative should not ratify the management; or if he undertook the management of the business in gratitude as a remuneratory service.

**2337** [2303]. A person who conducts the business of another against his express prohibition, cannot recover from him what he has spent, unless he has a legitimate interest in doing so.

**2338** [2304]. Whatever be the circumstances under which a person has undertaken the business of another, ratification by the owner of the business is equivalent to a mandate, and subjects him as to the manager to all the obligations of a principal.

The ratification has a retroactive effect to the date on which the management began.

**2339** [2305]. The manager of the business of another is personally bound by the contracts which he has entered into with third persons in connection with the management, even though he did so in the name of the owner of the business, if the latter did not ratify the management. The third persons, until the owner of the business ratifies the management, have a right of action only against the manager, and may bring such actions only against the owner of the business as the manager could have brought against him.

**2340** [2306]. When a person, without being the manager of the business or a mandatary, makes expenditures for the benefit of another person, he may bring an action to recover them against the person to whose benefit they have accrued.

**2341** [2307]. Among the class of expenditures referred to in the foregoing article, are the funeral expenses incurred in relation to the standing of the person and the usages of the place, but as such expenses are not considered those incurred for the repose of the soul after the burial of the body, nor the mourning of the family, nor any other expenditures, even though the deceased directed that they should be made.

**2342** [2308]. If the deceased left no property, the funeral expenses shall be paid by the surviving spouse, and when such spouse has no property, by the persons whose obligation it was to support the deceased during his or her lifetime.

**2343 [2309].** Any expenditure of money which has increased the value of something belonging to another, or from which some benefit has accrued to him, or an improvement to his property, shall be considered beneficial, even though the benefit has subsequently ceased.

**2344 [2310].** If the property improved by the advantageous employment of money is owned by a third person, to whom it had been transferred under an onerous title, the owner of the money used shall not have a right of action against the grantee of said property; but if the transfer had been made under a gratuitous title, he may bring an action for its recovery against the person who holds the property to the extent of its value at the time of the acquisition thereof.



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is one of narrowing down choices.  
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## BOOK III.

### OF REAL RIGHTS.

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#### TITLE I. OF THINGS CONSIDERED IN THEMSELVES OR IN RELATION TO RIGHTS.

**2345** [2311]. Corporeal objects susceptible of having a value are called *things* in this Code.

**2346** [2312]. Immaterial objects susceptible of having a value, and likewise things, are called *property* (*bienes*). The aggregate of the property of a person constitutes his *patrimony*.

**2347** [2313]. Things are movable or immovable by their nature, or by accession, or by their representative character.

**2348** [2314]. Things immovable by their nature are things which are in themselves immovable, such as the soil and all the solid and fluid parts which form its surface and depth: everything which is incorporated into the soil in an organic manner, and everything found under the soil without having been placed there by the act of man.

**2349** [2315]. Movable things which have been rendered actually immovable by their physical attachment to the soil, are immovables by accession, when such attachment is of a permanent character.

**2350** [2316]. Movable things which have been made intentionally accessories of an immovable by the owner of the latter, without being physically attached thereto, are also immovables.

**2351** [2317]. Public instruments which evidence the acquisition of real rights in immovable property, are immovables by their representative character, with the exception of the real rights of mortgage and antichresis.

**2352 [2318].** Movable things are those which can be carried from one place to another, whether moving by their own motion, or being moved by an external force, with the exception of those which are accessory to immovables.

**2353 [2319].** All the solid or fluid parts of the soil, detached therefrom, such as stones, earth, minerals, etc.; constructions on the surface of the soil of a temporary character; treasure, money and other objects placed beneath the soil; materials gathered for the construction of buildings until used; the materials derived from the destruction of buildings, even though the owners intend to reconstruct them immediately from the same materials; all public or private instruments which evidence the acquisition of personal rights, are also movables.

**2354 [2320].** Movable things which are destined to form part of rural or urban estates, shall take the character of immovables only if placed thereupon by the owners or their representatives, or by the lessees in pursuance with the contract of lease.

**2355 [2321].** When the movable things destined to become part of the estates are placed thereon by the usufructuaries, they shall be considered immovables only during the term of the usufruct.

**2356 [2322].** Things movable, even though attached to a building, retain their nature of movables when they are attached to the immovable in connection with the profession of the owner, or in a temporary manner.

**2357 [2323].** The following are not comprised in the furniture of a house: money, documents and papers, scientific and artistic collections, books and their stands, medals, arms, tools of arts and trades, jewelry, no wearing apparel of any kind in use, grains, liquids, merchandise, nor in general other things than those which make up the furnishings of a house.

**2358 [2324].** Things fungible are those in which each individual of a species is equivalent to another individual of the same species, either of which can be substituted for others of the same quality and in like amount.

**2359** [2325]. Consumable things are those the existence of which terminates by their first use and those which terminate as to the person ceasing to possess them on account of their individuality not being distinguishable. Things not consumable are those which do not cease to exist by the first use made thereof, even when they are susceptible of consumption or of deterioration with the lapse of time.

**2360** [2326]. Divisible things are those which can be divided into actual parts without absolutely destroying them, each of such parts forming a homogeneous and analogous whole as to the other parts and the thing itself.

**2361** [2327]. Principal things are those which can exist for themselves and by themselves.

**2362** [2328]. Accessory things are those the existence and nature of which are governed by another thing to which they are subject, or to which they are attached.

**2363** [2329]. The natural fruits and organic products of a thing, form one whole therewith.

**2364** [2330]. Things accessory as civil fruits, are those arising out of the use or enjoyment of the thing which has been granted to another, and also those arising out of the deprivation of the use of the thing. Salaries or compensation for material work, or for the immaterial work of the sciences, are likewise civil fruits.

**2365** [2331]. Things attached to the soil naturally or artificially, are things accessory to the soil.

**2366** [2332]. Things attached to things attached to the soil, as to rural or urban estates, are accessory to the estates.

**2367** [2333]. When the movable things are attached to other movable things without altering their substance, those to which the others are attached solely for the purpose of use, ornamentation, completion or preservation, are the principal things.

**2368** [2334]. If things have been attached to other things for the purpose of forming a whole, and the accessory thing cannot be distinguished from the principal, that having the greatest value shall be considered the principal thing. If the values are equal, the principal one shall be that having the

greatest volume. If the values and volumes are equal, there is neither a principal nor an accessory thing.

**2369** [2335]. Paintings, sculptures, writings and printed matter are always considered as the principal things if the work has a greater value and importance than the material on which it has been done, and the board, canvas, paper, parchment or stone to which they are attached are considered as accessory.

**2370** [2336]. All things the alienation of which is not expressly prohibited or subject to public authority are in commerce.<sup>1</sup>

**2371** [2337]. Things which are absolutely inalienable or relatively inalienable are out of commerce.<sup>2</sup>

The following are absolutely inalienable:

1. Things the sale or alienation of which is expressly forbidden by the law.

2. Things the alienation of which has been forbidden by acts *inter vivos* or dispositions of last will, in so far as this Code permits such prohibitions.

**2372** [2338]. Things for the alienation of which previous authorization is necessary are relatively inalienable.

## FIRST AND LAST CHAPTER.

### Of Things Considered in Relation to Persons.

**2373** [2339]. Things are the public property of the general State which forms the Nation, or of each individual State of which it is composed, according to the distribution of powers by the National Constitution; or they are the private property of the general State or of the individual States.

**2374** [2340]. The following are the public property of the general State or of the individual States:

1. The seas adjacent to the territory of the Republic, to a distance of one marine league, measured from the lowest

<sup>1</sup> See note to Art. 1535.

<sup>2</sup> See note to Art. 1535.

tide line; but the right of police as to objects concerning the security of the country and the observance of the fiscal laws, extends to a distance of four marine leagues measured in the same manner.

2. The inland seas, bays, inlets, ports and anchorages.

3. Rivers and their channels, and all streams running along natural channels.

4. The shores of the sea and the banks of navigable rivers, in so far as their use is necessary for navigation, by shores of the sea being understood the strip of land which the waters alternately cover and uncover during the highest tides, and not on the occasion of unusual storms.

5. Lakes which are navigable for vessels of more than one hundred tons, and also their shores.

6. The islands already formed or those which may be formed in the territorial sea, or in rivers of any kind, or in navigable lakes.

7. Streets, squares, roads, canals, bridges and any other public works, constructed for common utility or comfort.

**2375 [2341].** Private individuals have the use and enjoyment of the public property of the State or of the States, but are subject to the provisions of this Code and to the general or local ordinances.

**2376 [2342].** The following are the private property of the general State or of the individual States:

1. All lands which, being situated within the territorial limits of the Republic, have no other owner.

2. The mines of gold, silver, copper, precious stones and fossil substances, notwithstanding the ownership by corporations or private individuals of the surface of the land.

3. Vacant or unclaimed property, and property of persons dying without heirs, according to the provisions of this Code.

4. Walls, fortifications, bridges, railroads, and all constructions built by the State or States, and all the property acquired by the State or States under any title whatsoever.

5. Vessels belonging to enemies or privateers cast up on the shores of the seas or rivers of the Republic, their fragments, and the objects comprising their cargo.

**2377** [2343]. The following are susceptible of private appropriation:

1. The fish of inland seas, territorial seas, rivers and navigable lakes, subject to the observance of the regulations governing maritime or fluvial fishing.

2. Swarms of bees, if their owner does not claim them immediately.

3. Stones, shells, or other substances cast up by the sea, provided they bear no mark of previous ownership.

4. Plants and herbs growing on the seacoast, and also those which cover the surface of the waters of the sea or of rivers or lakes, subject to the police regulations.

5. Abandoned treasure, money, jewelry and precious objects found buried or hidden, without any indication or memory of their owner, subject to the limitations established in the particular part of this Code relating to such objects.

**2378** [2344]. Municipal property is property the ownership of which the State or States have vested in the municipalities. It is alienable in the manner and form prescribed by special laws.

**2379** [2345]. Temples and sacred and religious things belong to the respective churches or parishes, and are subject to the provisions of articles 33 and 41. This property may be alienated in accordance with the provisions of the Catholic Church with respect thereto, and the laws governing the national patronage.

**2380** [2346]. The temples and the religious things of dissenting churches belong to the respective corporations, and may be alienated in accordance with their by-laws.

**2381** [2347]. Things which are not the property of the State or States, of the municipalities or of the churches, are private property without any distinction as to the persons in whom the ownership thereof is vested, even though they be juristic persons.

**2382** [2348]. Bridges and roads and any other constructions made at the expense of private individuals on land belonging to them, are the private property of the individuals, even though the owners thereof permit all to use or enjoy them.

**2383 [2349].** The use and enjoyment of lakes which are not navigable are vested in the riparian owners.

**2384 [2350].** The ownership, use and enjoyment of springs which rise and are lost within the same estate, are vested in the owner of the estate.

## **TITLE II. OF POSSESSION AND OF TRADITION TO ACQUIRE IT.**

**2385 [2351].** There is possession of things when a person has a thing in his power, for himself or for another, with the intention of subjecting it to the exercise of a right of property.

**2386 [2352].** A person who actually holds a thing, but recognizes the ownership of another therein, is the mere holder of the thing, and the representative of the possession of the owner, even when the occupancy of the thing is based on a right.

**2387 [2353].** No one can change the cause of his possession, either by himself or by the lapse of time. A person who commenced to possess for himself and as the owner of the thing continues to possess as such, until it is proved that he has begun to possess for another. A person who has commenced to possess for another person is presumed to continue in possession under the same title, until the contrary is proved.

**2388 [2354].** Nor can the qualities or the vices of possession be changed either at will or by the lapse of time; as it began, so does it always continue, until a new title of acquisition is created.

**2389 [2355].** The possession is legal when it is the exercise of a real right constituted in accordance with the provisions of this Code. It is illegal, when held without a title, or under a void title, or when acquired in a manner not sufficient for the purpose of acquiring real rights, or when acquired from one who did not have the right to possess the thing, or to transfer it.



**2390** [2356]. Possession may be in good faith or in bad faith. Possession is in good faith when the possessor, through ignorance or error of fact, is convinced of its legality.

**2391** [2357]. A putative title is equivalent to an actually existing title, when the possessor has sufficient reasons to believe in the existence of a title in his favor, or for extending his title to cover the thing possessed.

**2392** [2358]. Good faith on the part of the possessor must be present in the origin of the possession, and in every act of collection of fruits, when gathered fruits are involved.

**2393** [2359]. When two or more persons possess a thing in common, each of them is answerable for the good or bad faith of his possession.

**2394** [2360]. In the possession by corporations and associations, the possession is in bad faith if a majority of the members thereof knew of the illegality of the possession. If the number of members in good faith is equal to the number of members in bad faith, the possession is in bad faith. The members in bad faith must indemnify those in good faith for the loss of the possession.

**2395** [2361]. In the collection of fruits, the good or bad faith of the person who succeeds to the possession of a thing shall be judged only with relation to the successor, and not by the good or bad faith of the predecessor, whether the succession be universal or singular.

**2396** [2362]. Every possessor has the presumption in his favor of the good faith of his possession, in the absence of proof to the contrary, excepting cases in which bad faith is presumed.

**2397** [2363]. The possessor is not obliged to produce his title of possession unless the production thereof is necessary as an obligation inherent in the possession. He is in possession because he possesses.

**2398** [2364]. Possession is vicious when of movable things obtained by theft, stellionate,<sup>3</sup> or abuse of confidence; and if of movables, when obtained by violence or clandestinely; and if precarious, when obtained by abuse of confidence.

**2399** [2365]. Possession is violent when obtained or held

<sup>3</sup> See note to Art. 1211 [1178].

by acts of violence, accompanied by material or moral violence, or by threats of the use of force, whether by the same person who caused the violence, or by his agents.

**2400** [2366]. There is violence, whether employed by the person or by his agents, or with his consent, or whether after having been employed it is expressly or impliedly ratified.

**2401** [2367]. The vice of violence is present also, whether employed against the real owner of the thing, or against the person who held it in his name.

**2402** [2368]. Violence constitutes only a relative vice with respect to the person against whom employed.

**2403** [2369]. Possession is clandestine, when the acts by which it was obtained or continued were concealed, or when taken in the absence of the possessor, or with precautions in order to withhold it from the knowledge of the persons who had a right to oppose it.

**2404** [2370]. Possession which is public in its origin is considered clandestine when the possessor has taken precautions to conceal its continuance.

**2405** [2371]. The vice of clandestine possession is likewise relative to the previous possessor only.

**2406** [2372]. Possession is by abuse of confidence when the thing had been received with the obligation of returning it.

## CHAPTER I.

### Of the Acquisition of Possession.

**2407** [2373]. Possession is acquired by the detention of the thing with the intention of holding it as one's own: without prejudice to the provisions relating to the acquisition of things by succession.

**2408** [2374]. The detention must consist of an act which, when not a personal contact, places the person in the presence of the thing with the physical possibility of taking it.

**2409** [2375]. If the thing has no owner, and is of those the ownership of which is acquired by occupancy according to the

provisions of this Code, possession is acquired by mere detention.

**2410 [2376].** In the case of future movables, which are to be separated from the immovables, such as earth, wood, pendent fruits, etc., it is understood that the acquirer took possession thereof the moment he began to remove them with the permission of the possessor of the immovables.

**2411 [2377].** Possession is also acquired by the tradition of things. There is tradition when one of the parties voluntarily delivers a thing and the other voluntarily receives it.

**2412 [2378].** The tradition is considered to have been made when made in accordance with one of the forms authorized by this Code. A bare statement on the part of the person making the tradition that he is to be considered dispossessed, or as having given the possession to the person acquiring it, does not supply the legal formalities.

**2413 [2379].** The possession of immovables can be acquired only by the tradition made by material acts on the part of the person who delivers the thing with the assent of the person who receives it; or by material acts on the part of the person who receives it, with the assent of the person who delivers it.

**2414 [2380].** The tradition of immovables may also be made by the possessor relinquishing the possession he had, and by the grantee performing acts of possession as to the immovable in his presence, and without any opposition.

**2415 [2381].** The possession of movables is taken only by tradition between persons who are capable, the actual possessor consenting to the transfer of the possession.

**2416 [2382].** The possession of movables, where the actual possessor does not consent to the transfer thereof, is taken solely by the material act of the occupancy of the thing, whether by theft or stellionate;<sup>4</sup> and that of immovables in a similar case by occupancy, or by the exercise of possessory acts, if violent or clandestine.

**2417 [2383].** In order to consider the tradition of immovables to have been made, if the person acquiring them

<sup>4</sup>See note to Art. 1212 [1178].

does not have the mere tenancy thereof, it is essential that the immovable be free from any other possession, and that there be no person to oppose the taking thereof by the grantee.

**2418 [2384].** Acts of possession of immovable things are: their cultivation, the gathering of fruits, their demarcation, building thereon or repairs thereto, and, in general, their occupancy in any manner whatsoever, that of some part thereof being sufficient.

**2419 [2385].** If the thing the possession of which it is sought to acquire is in a locked box, warehouse or building, it is sufficient that the possessor thereof at the time deliver the key to the place in which the thing is kept.

**2420 [2386].** The tradition is considered made even though the person to whom it is made is not present, if the possessor at the time forwards the thing to a third person named by the grantee thereof, or puts it in a place which is at the exclusive disposition of the latter.

**2421 [2387].** The tradition of the thing, whether movable or immovable, is not necessary in order to acquire possession, when the thing is held in the name of the owner and the latter transfers the ownership thereof by a juridical act to the person who possessed it in his name, or when the person who possessed it in the name of the owner begins to possess it in the name of another.

**2422 [2388].** The tradition of movables which are not present is considered made by the delivery of the bills of lading, invoices, etc., under the conditions prescribed in the Code of Commerce; or when forwarded for the account and order of others, the moment the person shipping them delivers the things to the agent who is to transport them; provided the principal has designated or approved the mode of shipment.

**2423 [2389].** When the things set forth in an obligation have been received, it is assumed, if the amount or thing was uncertain, that it has been individualized. If the obligation was alternative, that the selection has taken place; and that it has been sampled, counted, weighed or measured, if the thing was subject to these operations.

**2424 [2390].** The tradition of national or provincial securities is considered made by the transfer thereof, according to the laws governing them. The tradition of the stock of companies or associations registered in the name of the holder thereof, is considered made if done in accordance with the by-laws of the company or the contract of association. The tradition of endorsable shares is considered made by the mere endorsement thereof, without notice to the debtor being required. Shares payable to bearer are held to have been transferred by the mere actual tradition of the certificates.

**2425 [2391].** The tradition of instruments of credit is considered to have been made only when the debtor is notified thereof, or when accepted by him.

**2426 [2392].** Persons who do not have the full use of their reason, such as insane persons, idiots, and persons under ten years of age, are incapable of acquiring possession by themselves; but they may acquire it through their tutors or curators.

**2427 [2393].** Nor can juristic persons acquire the possession of things, except through their directors or managers.

**2428 [2394].** Possession is acquired through other persons when they acquire the thing with the intention of acquiring it for the principal. Such intention is assumed when the representative has not manifested a contrary intention by some outward act.

**2429 [2395].** Even when the representative manifests the intention of taking possession for himself, the possession is acquired for the principal when it was the intention of the person transferring it that the possession should be acquired for the person represented.

**2430 [2396].** For the acquisition of possession through a third person, it is not essential that the will of the principal coincide with the material act of his representative.

**2431 [2397].** The good faith of the representative who acquires possession does not offset the bad faith of the principal; nor does the bad faith of the representative exclude the good faith of the principal.

**2432 [2398].** Possession is acquired through a third person who is not empowered to take it under a mandate,

when the act is ratified by the person for whom it was taken. The ratification causes the possession acquired to be retroactive to the date on which it was taken by the unauthorized agent.

**2433** [2399]. The incapacity of the persons between whom the transfer of possession is to take place, carries with it the nullity of the tradition made or accepted by their incapable mandataries; but the incapacity of the mandataries does not carry with it the nullity of the tradition they make or accept, if they are capable of having a will, when their principals have the capacity to make or accept it, the provisions of Chapter II, of the Title *Of Mandate*, being observed.

**2434** [2400]. All things in commerce<sup>b</sup> are susceptible of possession. Property which does not constitute things is not susceptible of possession.

**2435** [2401]. Two possessions which are equal and of the same nature, cannot be present as to the same thing.

**2436** [2402]. If the thing the possession of which is about to be acquired is confounded with others, it is essential in order to acquire possession, that it be separated and designated distinctively.

**2437** [2403]. The possession of a thing raises the presumption of the possession of the things accessory thereto.

**2438** [2404]. The possession of a thing composed of a number of different and separate members, but joined under the same name, such as a flock, a herd, comprises only the individual parts which the thing comprises.

**2439** [2405]. When the thing forms a single corpus, a part thereof cannot be possessed without the whole corpus being possessed.

**2440** [2406]. If possession is to be taken of things which form a mass of property, it shall not be sufficient to take possession of one or a number thereof separately; it is essential that possession be taken of each of them, even though the tradition had been made conjointly.

**2441** [2407]. In order to take possession of part of an indivisible thing, it is necessary that such part have been ideally determined.

<sup>b</sup>See note to Art. 1535.

**2442** [2408]. When the thing is indivisible, the possession of a part thereof implies the possession of the whole.

**2443** [2409]. Two or more persons may take in common the possession of an indivisible thing, and each of them acquires the possession of the entire thing.

**2444** [2410]. In order to take possession of part of a divisible thing, it is essential that such part have been materially or intellectually determined. An uncertain part of a thing cannot be possessed.

**2445** [2411]. Possession based on an instrument comprises only the extent shown in the instrument, without prejudice to the additions which the possessor may have made through other causes.

## CHAPTER II.

### Effects of the Possession of Movable Things.

**2446** [2412]. The possession in good faith of a movable thing raises in favor of the possessor the presumption that he has the ownership thereof, and the power to contest any action of revendication, if the thing had not been stolen or lost.

**2447** [2413]. The actions for resolution, annulment, or rescission to which the previous possessor is subject cannot be directed against the actual possessor in good faith.

**2448** [2414]. The presumption of ownership cannot be set up by a person who is bound to return the thing, by virtue of a contract or a lawful or unlawful act.

**2449** [2415]. Nor can it be set up as to movable things belonging to the general State or to the individual States, nor as to the things accessory to a revendicated immovable.

## CHAPTER III.

### Of the Obligations and Rights Inherent in Possession.

**2450** [2416]. Obligations inherent in possession are those concerning the property, and which do not rest upon one or

more specified persons, but indeterminately upon the possessor of a specified thing.

**2451 [2417].** An obligation inherent in the possession of movable things, is the production thereof before the judge in the form prescribed by the laws of judicial procedure, when demanded by another having an interest in the thing, based on some right. The cost of the production shall be borne by the person demanding it.

**2452 [2418].** A person who has the possession of immovable things has as to his neighbors or third persons, the obligations imposed in Title VI of this Book.

**2453 [2419].** Passive servitudes, a mortgage, and the restitution of the thing, if the possessor be the creditor in an antichresis contract, are also obligations inherent in the possession of immovable things. So are the charges to give, do or refrain from doing, imposed by the prior possessor, upon the new possessor.

**2454 [2420].** Rights inherent in possession, whether real or personal, are those not vested in one or more specified persons, but indeterminately in the possessor of a specified thing.

**2455 [2421].** Active servitudes are rights inherent in the possession of immovables.

## CHAPTER IV.

### Of the Obligations and Rights of a Possessor in Good or Bad Faith.

**2456 [2422].** When a thing is revendicated by the owner thereof, the possessor in good faith cannot claim what he has paid his grantor for the acquisition thereof; but a person who, under an onerous title and in good faith, has acquired a thing belonging to another, which the owner would have had difficulty in recovering without such circumstance, may claim a proportionate indemnity.

**2457 [2423].** A possessor in good faith retains the fruits gathered which correspond to the time of his possession; but it is not sufficient that they correspond to the time of his



possession, if they had been received by him when he had already become a possessor in bad faith.

**2458** [2424]. Natural fruits are the spontaneous products of nature. Fruits which are not produced except by the industry of man or the cultivation of the soil are called industrial fruits. Civil fruits are the income which the thing produces.

**2459** [2425]. Natural or industrial fruits are considered gathered as soon as they have been torn up and detached. Civil fruits are considered gathered only after having been collected and received, and not day by day.

**2460** [2426]. Hanging or pendent fruits, whether natural or civil, belong to the owner, even though the civil fruits correspond to the time of the good faith possession, the possessor being repaid the expenses he has incurred in their production.

**2461** [2427]. The necessary or useful expenditures shall be paid the possessor in good faith. The special taxes levied on the immovable, the mortgages which encumbered it at the time he entered upon the possession, the money and materials used in necessary or useful improvements existing at the time of the return of the thing, constitute necessary or useful expenditures.

**2462** [2428]. A possessor in good faith may retain the thing until the necessary or useful expenditures have been repaid him; and even though he does not make use of this right and delivers the thing, said expenses are due him.

**2463** [2429]. The owner of the thing cannot set off the necessary or useful expenses against the fruits collected by a possessor in good faith; but he may set them off against the value of the benefit which has accrued to the possessor from partial destructions of the thing, and against the debts inherent in the immovable, corresponding to the time of the possession, if the owner proves that he has paid them.

**2464** [2430]. The expenses incurred by a possessor in good faith merely to preserve the thing in a good condition, may be compensated against the fruits collected and he cannot recover them.

**2465** [2431]. A possessor in good faith is not answerable for the total or partial destruction of the thing, nor for the deterioration thereof, even though caused by an act of his, beyond the amount of the benefit which has accrued to him, and he is bound only to deliver the thing in the condition in which it is. With regard to the movable objects of which he has disposed, he is obliged only to return the price he received.

**2466** [2432]. The heir of a possessor in bad faith shall retain the fruits corresponding to his possession in good faith.

**2467** [2433]. A possessor in good faith who has been adjudged to return the thing, is liable for the fruits collected from the date the complaint was served upon him, and those which he has failed to collect through his negligence; but not for those which the complainant could have collected. He is not liable for the loss and deterioration of the thing caused by a fortuitous event.

**2468** [2434]. The good faith of the possessor terminates also for the purposes of the preceding article, when he becomes cognizant of the vice in his possession.

**2469** [2435]. A possessor in bad faith is answerable for the complete destruction or the deterioration of the thing, even though due to a fortuitous event, if the thing would not have been destroyed or have deteriorated to the same extent, had it been in the possession of the owner.

**2470** [2436]. If the possession is vicious, he shall pay for the destruction or deterioration of the thing, even though the owner could not have prevented it had it been in his possession. Nor shall he have the right to retain the thing on account of the necessary expenses in connection therewith.

**2471** [2437]. When the possessor in bad faith has disposed of movable objects subject to restitution as accessories of the immovable, he is obliged to indemnify the owner in the full value thereof, even though he received a lower price therefor.

**2472** [2438]. A possessor in bad faith is obliged to deliver or pay for the fruits of a thing which he has collected, and for those which were not collected through his fault, deducting the expenses of cultivation, gathering the crop, or the extraction of the fruits.

**2473** [2439]. He is likewise obliged to indemnify the owner for the civil fruits which a thing which is not fructiferous could have produced, if the owner would have been able to profit therefrom.

**2474** [2440]. A possessor in bad faith is entitled to indemnity for the necessary expenses incurred in connection with the thing, and he may retain it until he has been reimbursed. A person who has stolen the thing does not enjoy this benefit.

**2475** [2441]. A possessor in bad faith may recover the cost of the useful improvements which may have increased the value of the thing to the concurrence of the higher existing value. These improvements may be set off against the fruits gathered or which he could have gathered. He loses the cost of the voluntary improvements, but he may remove them if in doing so he does not cause any damage to the thing.

**2476** [2442]. The owner need not, in order to recover payment for the fruits from a possessor in bad faith, prove his bad faith at the time of the acquisition of the possession, and it shall be sufficient that he prove his subsequent bad faith.

**2477** [2443]. When it is not possible to determine the time when bad faith began, the date of the service of summons shall be observed.

**2478** [2444]. A possessor in bad faith, as well as a possessor in good faith, must return the products which they have obtained from the thing which are not included in the class of fruits properly so-called.

## CHAPTER V.

### Of the Retention and of the Loss of Possession.

**2479** [2445]. Possession is retained and preserved by the mere intention of continuing therein, even though the possessor does not have the thing for himself or for another. The intention to retain possession is held to continue as long as a contrary intention has not been manifested.

**2480** [2446]. Possession is preserved, not only by the possessor himself, but through any other person, whether under a special power of attorney, or whether the person acts as the legal representative of the person for whom he holds possession.

**2481** [2447]. Possession continues, even when the person who held possession in the name of the possessor expresses the intention of holding possession in his own name, or even when the representative of the possessor abandons the thing, or dies, or the latter or his representative becomes incapable of acquiring possession.

**2482** [2448]. The possession of a thing is retained through the persons who hold it in the name of the possessor, not only when they hold it for themselves, but also when they hold it for others who believed them to be the real possessors, and had the intention of holding possession for them.

**2483** [2449]. When the person through whom the possession is held dies, the possession is continued through the heir, even when the latter believes that the ownership and the possession were vested in his predecessor.

**2484** [2450]. As long as there is any probable hope of finding a thing lost, possession is retained by mere intention.

**2485** [2451]. Possession is lost when the object possessed ceases to exist, whether by death, if an animate thing, or by total destruction, if of a different nature, or when one species is transformed into another.

**2486** [2452]. Possession is lost when by any event whatsoever the possessor finds himself physically incapable of exercising acts of possession as to the thing.

**2487** [2453]. Possession is lost by the tradition of the thing by the possessor to another person, if not made for the purpose of transferring to him the mere tenancy thereof.

**2488** [2454]. Possession is also lost when the possessor, if a capable person, voluntarily abandons the thing with the intention of no longer possessing it.

**2489** [2455]. Possession is lost when by the act of a third person the possessor or the person who holds the thing for him is dispossessed, provided the person who ejected him

from the possession takes it with the intention of holding possession.

**2490** [2456]. Possession is also lost when some one is permitted to usurp it, enter into possession of the thing and the enjoyment thereof for a period of one year, without the former possessor performing any act of possession during such time, or disturbing the possession of the person who usurped it.

**2491** [2457]. Possession is lost by the loss of the thing without any probable hope of finding it. Nevertheless, possession is not lost as long as the thing has not been removed from the place where the possessor kept it, even though he should not recollect where he put it, whether it be the estate of another or his own estate.

**2492** [2458]. Possession is lost when the person who holds the thing in the name of the possessor shows by outward acts the intention of depriving the possessor of the disposition of the thing, and when his acts produce said effect.

**2493** [2459]. Possession is lost when the thing suffers a change which renders it lawfully not susceptible of being possessed, on account of being out of commerce.

## CHAPTER VI.

### Of the Mere Tenancy of Things.

**2494** [2460]. The mere tenancy of things by the will of the possessor, or of the mere holder thereof, is acquired only by tradition, the delivery of the thing being sufficient without the necessity of any formality whatsoever.

**2495** [2461]. When any person is in a position to perform on his own account or for another acts of ownership as to a thing, but only with the intention of possessing in the name of another, he shall also be the mere holder of the thing.

**2496** [2462]. The following are included in the class of the preceding article:

1. Persons who possess in the name of another, even with a personal right to hold the thing, as a lessee, or a borrower in commodatum.

2. Persons who possess in the name of another without the right to hold the thing, as a depositary, mandatary or any person representing another.

3. A person who has transferred the ownership of the thing, and constituted himself the possessor in the name of the grantee.

4. A person who has continued in the possession of a thing after the termination of the right to possess it, as a usufructuary, after the termination of the usufruct, or a creditor in an antichresis contract.

5. A person who continues in the possession of the thing after a judgment annulling his title, or denying him the right of possession.

6. A person who continues in the possession of the thing after having acknowledged that the possession or right of possession is vested in another.

**2497** [2463]. The mere holder of a thing is obliged to preserve it, and is liable for any fault on his part, according to the cause which gave him the tenancy of the thing.

**2498** [2464]. He must name the possessor in whose name he holds, if sued by a third person on account of the thing, under the penalty of not being able to make the possessor in whose name he holds possession answerable for eviction.

**2499** [2465]. He must return the thing to the possessor in whose name he possesses, or to his representative, upon demand for the return of the thing being made upon him in accordance with the cause which made him the holder of the thing.

**2500** [2466]. If in order to preserve the thing he has made necessary expenditures or improvements, he shall have the right to retain it until he is indemnified by the possessor.

**2501** [2467]. The return of the thing must be made to the possessor from whom the mere holder received it, even though others claim it, but with the citation of the latter.

### TITLE III. OF POSSESSORY ACTIONS.

**2502** [2468]. A valid title gives only a right to the possession of the thing, and not the possession itself. A person who has a right to the possession only cannot, in the event of opposition, take possession of the thing: he must bring an action to obtain it through legal channels.

**2503** [2469]. Whatever be the nature of the possession, no one can disturb it arbitrarily.

**2504** [2470]. The fact of possession gives the right to defend one's own possession, and to repel force by the employment of a sufficient force, in cases in which the aid of the judicial authorities would arrive too late; and the person ousted may recover his possession by his own authority without any interval of time, provided he does not exceed the limits of self-defense.

**2505** [2471]. If the last state of the possession is doubtful between the person claiming to be the possessor and the person who seeks to oust him, or disturb his possession, it is held that he has it who proves the longest period of possession. If it does not appear whose possession was longest, it is held that the person who has the right of possession, or a better right of possession, is entitled thereto.

**2506** [2472]. With the exception of the case of the preceding article, possession has nothing in common with the right of possession, and proof in possessory actions of the right of possession on the part of the plaintiff or defendant will answer no purpose.

**2507** [2473]. The possessor of the thing cannot institute possessory actions, if his possession has not lasted for one year at least without the vices of being precarious, violent, or clandestine. Good faith is not required for possessory actions.

**2508** [2474]. In order to establish possession for one year, the possessor may tack his possession to that of the person from whom he has it, whether under a universal title, or a particular title.

**2509** [2475]. The possession of a universal successor shall always be considered tacked to that of the person from whom the succession has been derived; and it partakes of the qualities which the succession has. The possession of the successor under a singular title may be separated from that of his predecessor. Both possessions may be joined only if not vicious.

**2510** [2476]. In order that the two possessions may be joined, it is necessary that they have not been interrupted by a vicious possession, and that one be derived from the other.

**2511** [2477]. The possession need not be for one year, if disturbed by a person who is not a possessor for one year, and who has no right of possession in the thing.

**2512** [2478]. In order for possession to give a possessory right of action, it must have been acquired without violence; and even though not violent at the beginning thereof, it must not have been disturbed during the year when it was acquired by repeated acts of violence.

**2513** [2479]. Possession must be public in order to give a possessory right of action.

**2514** [2480]. Possession must not be precarious, but must be under the title of ownership, in order to give a possessory right of action.

**2515** [2481]. Possession for a period of one year must be continuous and uninterrupted, in order to give a possessory right of action.

**2516** [2482]. A person who has a right of possession and is disturbed therein or ousted, may bring the real action vested in him, or have recourse to possessory proceedings, but he cannot join a petitory and a possessory action. If he brings a real action, he shall forfeit his right to bring possessory proceedings; but if he institutes possessory actions, he may subsequently avail himself of the real action.

**2517** [2483]. The judge taking cognizance of the petitory action may, nevertheless, and without joining the petitory and the possessory actions, adopt during the course of the proceedings, provisional measures relating to the care and preservation of the thing in litigation.



**2518 [2484].** A possessory action having been brought, a petitory action cannot be instituted before the possessory proceedings have terminated.

**2519 [2485].** The plaintiff in a petitory action cannot have recourse to possessory proceedings on account of disturbances in possession prior to the filing of the complaint; but the defendant may have recourse to such actions on account of disturbances in possession prior to the complaint.

**2520 [2486].** A defendant who has been defeated in a possessory action cannot bring a petitory action until after he has satisfied in full all the judgments rendered against him.

**2521 [2487].** Possessory rights of action are vested only in the possessors of immovables, and their sole purpose is to recover possession, or maintenance in full and unrestricted possession.

**2522 [2488].** Movables cannot be the subject of an action on account of ouster, unless the possessor has been dispossessed thereof together with the immovable. A person dispossessed of movable things has only a civil action for theft or a similar action, whether a criminal action has preceded it or not.

**2523 [2489].** The co-owner of an immovable may have recourse to possessory actions without the necessity of the concurrence of the other co-owners, and may even bring them against any of the latter who, disturbing him in the common enjoyment, claim an exclusive right to the immovable.

**2524 [2490].** An action on account of ouster may be brought by any possessor and his heirs ousted from the possession of immovables, even when their possession is vicious, without the obligation of producing any title whatsoever against the party ousting them, his heirs and accomplices, even though he be the owner of the immovable.

**2525 [2491].** A person who, knowing of the ouster, obtained the immovable usurped, is considered an accomplice of the dispossessor; but a third person in possession of the immovable who did not obtain it immediately from the dispossessor, is not so considered, even though he obtained it in bad faith, knowing of the ouster suffered by the possessor.

**2526** [2492]. A possessor of immovables who loses the possession thereof by other means than ouster, has no right of action on account of ouster, even though he loses it by violence committed in the contract or in the tradition.

**2527** [2193]. An action on account of ouster may be brought only within one year after the date the possessor has been ousted, or after the date he could notify the person who held possession for him of the ouster.

**2528** [2494]. The plaintiff must prove his possession, the ouster and the time when the defendant committed it. If the court should find in favor of the plaintiff, the defendant must be adjudged to return the immovable with all of its accessories, with indemnity to the possessor for all damages <sup>6</sup> and the costs of the proceedings, to and including the execution of the judgment.

**2529** [2495]. An action for maintenance in possession is vested in the possessor of an immovable, who is disturbed in the possession, provided such possession is not vicious as to the defendant.

**2530** [2496]. There is disturbance in the possession only when a person performs, against the will of the possessor of the immovable, with the intention of obtaining possession, acts of possession not resulting in the absolute exclusion of the possessor.

**2531** [2497]. If the person performing the act of disturbance does not do so for the purpose of becoming the possessor, the action of the possessor shall be tried as one to recover damages and not as a possessory action. If the act had the effect of excluding absolutely the possessor from the possession, the action shall be tried as an action on account of ouster.

**2532** [2498]. If the disturbance in possession consists of a new work begun on lands and immovables of the possessor, or in the destruction of existing works, the possessory action shall be tried as an action on account of ouster.

**2533** [2499]. There is disturbance in possession when by a new work begun on immovables which do not belong to

<sup>6</sup> *Pérdidas é intereses.* See Art. 1103 [1069].

the possessor, of whatsoever class, the possession of the latter suffers some damage which accrues to the benefit of the person constructing the new work.

**2534** [2500]. The purpose of the possessory action in such case is to obtain an injunction against the continuation of the work during the pendency of the action, and an order for the destruction of the work upon its conclusion.

**2535** [2501]. Possessory actions shall be tried in a summary manner and in the form prescribed by the laws of judicial procedure.

#### **TITLE IV. OF REAL RIGHTS.**

**2536** [2502]. Real rights can be created by the law only. Any contract or disposition of last will which constitutes other real rights or modifies those recognized by this Code, is valid only as a constitution of personal rights, provided it could have such value.

**2537** [2503]. The following are real rights:

1. Ownership and co-ownership.
2. Usufruct.
3. Use and habitation.
4. Active servitudes.
5. The right of mortgage.
6. Pledge.
7. Antichresis.

**2538** [2504]. If a person who has transferred or constituted a real right without having the right to transfer or constitute it, subsequently acquires such right, it shall be understood that he transferred or constituted an actual real right as if he had had it at the time of the transfer or constitution.

**2539** [2505]. Real rights are acquired and lost in accordance with the provisions of this Code relating to facts or acts whereby the acquisition thereof is made, or the loss thereof caused.

## TITLE V. OF THE OWNERSHIP OF THINGS AND OF THE MODES OF ACQUIRING IT.

**2540** [2506]. Ownership is the real right by virtue of which a thing is subject to the will and action of a person.

**2541** [2507]. Ownership is called full or perfect, when it is perpetual and the thing is not subject to any real right in favor of other persons. It is called less full, or imperfect, when it must be resolved at the end of a certain time, or upon the advent of a condition, or when the thing which forms its object is an immovable, subject to a real right with respect to third persons, such as a servitude, usufruct, etc.

**2542** [2508]. Ownership is exclusive. Two persons cannot each have the full ownership of a thing; but they may be proprietors in common of the same thing, to the extent of the interest which each has.

**2543** [2509]. A person who has once acquired the property of a thing under one title, cannot afterwards acquire it under another, unless it be to supply a deficiency in the first title under which he acquired it.

**2544** [2510]. Ownership is perpetual and subsists independently of the exercise which can be made thereof. The owner does not cease to be the owner, even though he perform no act of ownership, even though he be disabled to perform such act, and even though a third person perform such acts with his assent or against his will, unless he permit the thing to be possessed by another the time necessary to enable such person to acquire the ownership by prescription.

**2545** [2511]. No one can be deprived of his property except for a cause of public utility, after dispossession proceedings and the payment of a just indemnity. By a just indemnity in this case is understood not only payment for the actual value of the thing, but also for the direct loss he may sustain by being deprived of his property.

**2546** [2512]. When the urgency of the expropriation partakes of the character of a necessity, so peremptory as to make any form of procedure impossible, the public authori-

ties may immediately dispose of the private property, under their liability.

**2547 [2513].** The right to possess the thing, to dispose of or benefit therefrom, to use and enjoy it, according to the will of the owner, is inherent in ownership. The owner may change its nature, degrade it or destroy it; he has the right of accession, of revendication, of constituting real rights therein, of collecting all its fruits, of prohibiting another person from making use thereof, or collecting its fruits; and to dispose thereof by acts *inter vivos*.

**2548 [2514].** His exercise of these powers cannot be restricted on the ground that it would deprive another of some advantage, comfort, or pleasure, or cause him some inconvenience, provided he does not attack his right of property.

**2549 [2515].** The owner has the power to perform, with respect to the thing, all the juridical acts of which it is legally susceptible; to rent or lease it, and alienate it under an onerous or gratuitous title, and if it is an immovable, to subject it to servitudes or mortgages. He may relinquish his ownership, simply abandon the thing without transferring it to another person.

**2550 [2516].** The owner has the power to exclude third persons from the use or enjoyment, or the disposition of the thing, and to adopt to this end whatever measures he deems advisable. He may prohibit that anything belonging to another be placed upon his immovables; that anyone trespass upon or pass through his property. He may enclose his estates by walls, ditches, or fences, subject to the police regulations.

**2551 [2517].** When a thing is placed on the land or estate of another, the owner of such land or estate has the right to remove it without previous notice, if he had not given his consent. If he had given his consent for a specified purpose, he shall not have the right to remove it before the purpose has been fulfilled.

**2552 [2518].** The ownership of the soil extends to its entire depth, and to the aerial space above the soil in perpendicular lines. It comprises all the objects to be found beneath the soil, such as treasures and mines, reserving the modifications

of special laws on both subjects. The proprietor is the exclusive owner of the aerial space; he may extend his constructions therein, even though they take away the light, view or other advantages from his neighbor; and he may also demand the demolition of the works of a neighbor which encroach upon this space at any height.

**2553 [2519].** All constructions, plantations and works on the surface of a lot of land, or below it, are presumed to have been made by the owner of the land, and to belong to him, in the absence of proof to the contrary. This proof may be parol, whatever be the value of the works.

**2554 [2520].** The ownership of a thing comprises at the same time the ownership of the things accessory thereto, whether naturally or artificially attached.

**2555 [2521].** The ownership of works built up into the aerial space, standing on the ground, does not raise a presumption of the ownership of the land; nor does the ownership of works beneath the soil, such as a quarry, vault, etc., create in favor of the owner thereof a presumption of the property of the soil.

**2556 [2522].** The ownership of a thing virtually comprises that of the objects which it is susceptible of producing, whether spontaneously, or with the aid of the work of man; as well as of the pecuniary profit which can be obtained therefrom, except when a third person has the right to enjoy the thing, and the exception relating to a possessor in good faith.

**2557 [2523].** Any person claiming a right in the thing of another, must prove his claim, and until such proof is presented the presumption is that the right of the owner is exclusive and unlimited.

**2558 [2524].** Ownership is acquired:

1. By appropriation.
2. By specification.
3. By accession.
4. By tradition.
5. By the collection of the fruits.
6. By succession to the rights of the owner.
7. By prescription.

## CHAPTER I.

### Of Appropriation.

**2559** [2525]. The apprehension of movable things having no owner, or abandoned by the owner, made by a person capable of acquiring things with the intent of appropriating them, constitutes a title for the acquisition of the ownership thereof.

**2560** [2526]. Things abandoned by the owner are those the possession of which he materially relinquishes with the intention of no longer continuing to own them.

**2561** [2527]. Things susceptible of appropriation by occupancy are animals which are hunted, the fish of the seas and rivers and of navigable lakes; things to be found on the bottom of the seas or rivers, such as shells, corals, etc., and other substances cast up by the sea or the rivers, provided they bear no marks of previous ownership; money and any other objects voluntarily abandoned by their owners to be appropriated by the first occupant; wild or savage animals and domesticated animals which recover their original freedom.

**2562** [2528]. Immovables, domestic or domesticated animals, even though they escape and seek refuge on property belonging to another, things lost, that which falls into the sea or a river without the will of the owners, things jettisoned for the purpose of saving vessels, and wreckage, are not susceptible of appropriation.

**2563** [2529]. If the things abandoned by their owners have been abandoned for certain persons, such persons only shall have the right to appropriate them. If others take them, the owner who abandoned them shall have the right to recover them or demand their value.

**2564** [2530]. In case of doubt, the presumption is not that the thing has been abandoned by its owner, but that it has been lost, if it be a thing of some value.

**2565** [2531]. A person who finds a thing which has been lost is not obliged to take it; but if he does so he is subject

to the obligations of a depositary who receives compensation for his care, as long as he retains possession thereof.

**2566** [2532]. If the person who finds the thing knows or could have ascertained who its owner is, he must immediately notify him thereof; and if he fails to do so, he is not entitled to any reward, even though it has been offered by the owner, nor to any compensation for his work, nor to the expenses incurred by him.

**2567** [2533]. A person who has found a thing lost is entitled to reimbursement of the expenses incurred in connection therewith, and to a reward for the find. The owner of the thing may release himself of all claims by relinquishing it to the finder.

**2568** [2534]. If the person who found the thing does not know the owner thereof, he must deliver it to the nearest judge, or to the local police, who shall be obliged to publish advertisements at intervals of thirty days.

**2569** [2535]. If no person appears to prove ownership within a term of six months after the last advertisement, the article shall be sold at public auction, and after deduction of the cost of apprehension, the preservation thereof, and the reward due the finder, the remainder shall revert to the municipality of the place where the thing was found.

**2570** [2536]. If the owner appears before the sale of the article, it shall be returned to him upon payment of the expenses and of the amount fixed by the judge as the reward to the finder. If the owner had offered a reward for the article, the finder may elect between the reward fixed by the judge and that offered.

**2571** [2537]. After the thing has been sold at public auction, it is irrevocably lost to the owner, if he does not prefer to pay all the expenses and the amount for which the thing was sold, if already paid.

**2572** [2538]. If the thing is perishable, or if its care or preservation is costly, the public sale may be anticipated, and the owner, if he appears before the expiration of six months after the last advertisement, is entitled to the price, after deduction of the expenses and the reward for the find.



**2573** [2539]. A person who appropriates the things which he finds and does not proceed in accordance with the provisions of the preceding articles, commits a theft; so does a person who appropriates wreckage and things cast into the sea or into rivers for the purpose of lightening vessels.

**2574** [2540]. Hunting is another mode of appropriation, when the wild or savage animal, found in its natural liberty, has been captured by the hunter dead or alive, or has fallen into the traps set by him.

**2575** [2541]. While the hunter is pursuing an animal which he has wounded, any person who captures it must turn it over to him.

**2576** [2542]. Hunting may be done on one's own lands only, or on the lands of another which are not enclosed, planted or cultivated, and subject to the police regulations.

**2577** [2543]. Animals hunted on another's lands, which are enclosed, planted or cultivated, without the permission of the owner, belong to the owner of the land, and the hunter is obliged to pay for the damage caused by him.

**2578** [2544]. As long as a person is pursuing a domesticated animal belonging to him which has recovered its liberty no one can take or hunt it.

**2579** [2545]. Bees which leave the hive and light on a tree not belonging to the owner thereof, are understood as having recovered their natural liberty, if the owner does not pursue them, and only in this case do they belong to the person who captures them.

**2580** [2546]. If the swarm of bees lights on the land of another which is inclosed or cultivated, the owner pursuing them cannot take them without the consent of the owner of the land.

**2581** [2547]. Fishing is also another mode of appropriation, when the fish are caught by the fisherman or have fallen into his nets.

**2582** [2548]. Fishing in waters the use of which is public is free. Every riparian owner has the right to fish on his own side to the middle of the river or stream.

**2583** [2549]. In addition to the preceding provisions, the

right to hunt and fish is subject to the regulations of the local authorities.

**2584** [2550]. A person who finds treasure concealed or buried in his own house or estate, acquires the ownership thereof.

**2585** [2551]. By treasure is understood any object the owner of which is not known, which is concealed or buried in an immovable, whether of old or recent creation, excepting objects found in sepulchres or in public places set aside for the sepulture of the dead.

**2586** [2552]. Search for treasure upon the property of another without the permission of the owner or of the person who represents him, even though he hold it as a mere occupant, is forbidden; but a person who is the co-possessor of the estate or the imperfect possessor, may seek it, provided the estate be restored to its original condition.

**2587** [2553]. If a person claims to have treasure on the estate of another and desires to make search therefor, he may do so without the consent of the owner of the estate upon designating the place where it is located and guaranteeing indemnity for any damage caused the owner.

**2588** [2554]. The first person who uncovers the treasure, even though in part, and even when he does not take possession thereof nor recognize it as treasure, and even when other persons are working with him, is considered the finder thereof.

**2589** [2555]. If in the same place, or in its immediate vicinity, there is another treasure, the finder shall be the first person who uncovers it.

**2590** [2556]. A person who finds treasure on the estate of another is the owner of one-half thereof. The owner of the estate is entitled to the other half.

**2591** [2557]. If he be a co-possessor only, he shall take one-half of the treasure he finds, and the other half shall be divided among all the co-possessors, according to their share in the possession.

**2592** [2558]. If he be an imperfect possessor, as a usufructuary, a usuary, with a real right of habitation, or a creditor in

an antichresis contract, the person who finds the treasure is entitled to one-half, and the owner to the other half.

**2593** [2559]. If the treasure is found by a third person who is not an imperfect possessor, he is entitled to one-half, and the owner to the other half.

**2594** [2560]. The treasure found by the husband or wife, on the estate of one or the other, or that part to which the owner of the treasure found by a third person on the estate of the husband or of the wife is entitled, belongs to both as acquets and gains.

**2595** [2561]. The right as finder of treasure cannot be invoked except as to treasure found accidentally. Nor can it be invoked by a laborer who has been ordered by the owner to make excavations in search of treasure, nor by others who do so without the authority of the owner. In such cases the treasure found belongs to the latter.

**2596** [2562]. A laborer who finds treasure while working on the estate of another, is entitled to one-half thereof, even though the owner had announced to him the possibility of finding treasure.

**2597** [2563]. A person who undertakes work on an estate belonging to another without the consent of the owner, for a purpose other than that of seeking treasure, is also entitled to one-half of the treasure found.

**2598** [2564]. The ownership of the treasure found may be proved by the person who claims ownership, by parol evidence, presumptions, or by any other kind of proof.

**2599** [2565]. It is presumed that objects of recent origin belong to the owner of the place where they are found, if he died in the house which formed part of the estate.

**2600** [2566]. Treasure found on a mortgaged immovable, or on one which has been given in antichresis, is not comprised either in the mortgage or in the antichresis.

## CHAPTER II.

### Of Specification or Transformation.

**2601** [2567]. Ownership is acquired by specification or transformation when a person, by his work, makes a new object out of material belonging to another, with the intention of appropriating it.

**2602** [2668]. If the transformation was made in good faith, the person making it not knowing that the thing belonged to another, and it is not possible to restore it to its original form, the owner thereof shall be entitled to the proper indemnity only.

**2603** [2569]. If the transformation was made in bad faith, the person making it knowing or being required to know that the thing belonged to another, and it is impossible to restore it to its original form, the owner of the material is entitled to indemnity for all damages, and shall have the proper criminal action, if he does not prefer to retain the thing in its new form, paying the person who made the transformation the increased price he would have accepted therefor.

**2604** [2570]. If the transformation was made in good faith, and it is possible to restore the thing to its original form, the owner of the material shall be the owner of the new object upon paying the person who made the transformation for his work; but he may demand only the value of the material, the ownership of the object being left to the person who made the transformation.

## CHAPTER III.

### Of Accession.

**2605** [2571]. Ownership is acquired by accession when a movable or immovable accrues to another by natural or artificial adherence.

### Of Alluvion.

**2606** [2572]. The accretions of soil received gradually and imperceptibly by lands abutting on the banks of rivers as a result of the current of waters, are accessory thereto, and belong to the owners of the riparian estates. If on the shores of the sea or of navigable rivers, they belong to the State.

**2607** [2573]. The land which the course of the waters uncovers by imperceptibly withdrawing from one of its shores and encroaching upon the other, also belongs to the riparian owners.

**2608** [2574]. The right of alluvion belongs only to the owners of the lands abutting on the current of water of rivers or creeks; but it is not vested in the owners of land situated on the bank of a canalized river, the edges of which are formed by artificial dikes.

**2609** [2575]. If a public road is situated on the shores of the river, the alluvion belongs to the State or to the respective municipality, according to whether the road is a municipal or State road.

**2610** [2576]. The attachment of the soil does not constitute alluvion no matter how close it is to the bank of the river, if separated therefrom by a current of water which forms part of the river and which is not intermittent.

**2611** [2577]. Nor do the sand and mud, comprised within the limits of the bed of the river, as determined by the normal high water mark, constitute alluvion.

**2612** [2578]. The owners of lands bordering on tranquil waters, such as lakes, ponds, etc., do not acquire the land uncovered by any decrease in the volume of the water, nor do they lose the land covered by the water in cases of extraordinary rise.

**2613** [2579]. The increase of land shall not be considered a spontaneous effect of the waters, when it is a result of works constructed by riparian owners to the prejudice of other riparian owners. The latter have the right to demand that the waters be returned to their bed; and if this is not pos-

sible, they may bring an action for the demolition of such works.

**2614** [2580]. If the works constructed by one of the riparian owners are not merely of a defensive character and project into the current of the water, the owner of the other bank shall have the right to demand the removal of the works.

**2615** [2581]. Alluvial land is not acquired until it is definitely formed, and it is not considered so formed until it has attached to the bank and has ceased to form part of the bed of the river.

**2616** [2582]. When alluvial land is formed along a number of estates, the division shall be made among the owners entitled thereto in proportion to the frontage of each estate on the old river.

### **Avulsion.**

**2617** [2583]. When a river or stream carries away by a sudden irruption a thing susceptible of natural adherence, such as earth, sand or plants, and attaches them either by adjunction or superimposition to a lower field, or to an estate situated on the opposite shore, the owner thereof retains his ownership for the sole purpose of removing such thing.

**2618** [2584]. Whenever things torn away by avulsion adhere naturally to the riparian land to which they were carried, the former owner thereof does not have the right to recover them.

**2619** [2585]. Should he not desire to recover them before they adhere to the land where they were left by the waters, the owner of the land shall not have the right to demand their removal.

**2620** [2586]. When the avulsion is of things not susceptible of natural adherence, the provisions relating to things which have been lost are applicable.

### **Building and Planting.**

**2621 [2587].** A person who sows, plants or builds on his own estate with seeds, plants or materials belonging to another, acquires the ownership thereof, but he shall be obliged to pay their value; and if he has acted in bad faith, he shall in addition be adjudged to pay indemnity for all damages, and, if proper, suffer the consequences of criminal prosecution. The owner of the seeds, plants or materials may recover them if he sees fit, if they subsequently become separated.

**2622 [2588].** When building, sowing or planting is done in good faith with one's own seeds or material on the land of another, the owner of the land shall have the right to retain the work, sowing or planting upon paying the corresponding indemnity to the builder, sower or planter in good faith, and the latter shall not have the right to demolish what he has built, sowed, or planted, if the owner of the land does not consent thereto.

**2623 [2589].** If any building, sowing or planting has been done in bad faith on the land of another, the owner of the land may demand the demolition of the work and the restoration of things to their original condition at the cost of the builder, sower or planter. But if he desires to retain what has been done, he must reimburse the cost of the material and labor.

**2624 [2590].** When there has been bad faith not only on the part of the person who builds, sows or plants on the land of another, but also on the part of the owner, the rights of both shall be adjusted according to the provisions relating to builders in good faith. There is understood to be bad faith on the part of the owner whenever the building, sowing or planting has been done in his sight and with his knowledge, without any objection on his part.

**2625 [2591].** If the owner of the work constructs it with materials belonging to another, the owner of the materials has no action against the owner of the land, and may demand of the owner of the land the indemnity only which such owner would have been required to pay the owner of the work.

**2626** [2592]. When domesticated animals which are at large emigrate and contract the habit of living on the estate of another, the owner of such estate acquires the ownership of said animals, provided he has not made use of some device to attract them. The former owner has no right of action whatsoever to recover them, nor to demand any indemnity.

**2627** [2593]. If some device has been employed to attract them, their owner has a right of action for their recovery, if he can identify them. Otherwise he is entitled to indemnity for their loss.

### Of Adjunction.

**2628** [2594]. When two movable things, owned by different persons, become united in such a manner as to form one whole, the owner of the principal thing acquires the ownership of the accessory thing, even though their separation is possible, upon paying the owner of the accessory thing the value thereof.

**2629** [2595]. When the thing added for the embellishment or perfection of another is by its nature much more valuable than the principal thing, the owner thereof may demand its separation, even though it cannot be done without some damage to the thing to which it has been incorporated.

**2630** [2596]. The owner of material used in bad faith may demand the return to him of material of the same kind, and in the same form, amount, weight or measure as that which he had, or that the indemnity owing him be estimated on this basis.

**2631** [2597]. When dry things or fluids belonging to different persons have become confounded or mixed, resulting in a transformation, if one of them is the principal thing, the owner thereof acquires the ownership of the whole upon payment to the other of the value of the accessory material.

**2632** [2598]. When there is no principal thing, and when the things are separable, the separation shall be made at the expense of the person who joined them without the consent of the other party.



**2633** [2599]. When they are inseparable and the confusion or mixture has not resulted in a new species, the owner of the thing joined without his consent may demand of the person who made the union or mixture the value of the thing before the union.

**2634** [2600]. If the confusion or mixture is due to a casual event, and if the things are inseparable and there is no principal thing, each owner acquires in the whole a right in proportion to his interest, in view of the value of the things mixed or confounded.

## CHAPTER IV.

### Of Tradition which Transfers Ownership.

**2635** [2601]. In order that tradition whereby possession is transferred may cause the acquisition of the ownership of the thing delivered, it must be made by an owner who has the capacity to alienate, and the person who receives it must be capable of acquiring.

**2636** [2602]. The tradition must be under a title sufficient to transfer ownership.

**2637** [2603]. The only rights transferable by tradition are those which belong to the person who makes it.

## CHAPTER V.

### Of the Extinction of Ownership.

**2638** [2604]. The right of ownership is extinguished in an absolute manner by the destruction or total consumption of the thing which was subject thereto, or when the thing is put out of commerce.

**2639** [2605]. The ownership of wild or domesticated animals terminates when they recover their former liberty, or lose the habit of returning to the home of their owner.

**2640** [2606]. The right of ownership is lost when the law vests in a person, by virtue of transformation, accession or prescription, the ownership of a thing belonging to another.

**2641** [2607]. It is also lost when a thing is abandoned, even though another has not yet appropriated it. As long as another does not appropriate the thing abandoned, the person who was the owner thereof is at liberty to reconsider the abandonment and reacquire the ownership.

**2642** [2608]. A person who has the ownership of an undivided portion of a thing only may abandon it as to his interest; but a person who has the whole thing cannot abandon it as to an undivided portion thereof.

**2643** [2609]. Ownership is also lost by the alienation of the thing when another acquires the ownership thereof by tradition, in the case of movable things, and in the case of immovables, after the signature of the public deed whereby they are alienated, followed by their tradition.

**2644** [2610]. It is also lost by the judicial transfer of the ownership, whatever be its cause, the execution of a judgment, expropriation on account of necessity or public utility; or as the effect of actions wherein the restitution is ordered of a thing the ownership of which has not been transferred except by virtue of a vicious title.

## TITLE VI. OF RESTRICTIONS UPON AND LIMITATIONS OF OWNERSHIP.

**2645** [2611]. The restrictions imposed upon private ownership solely in the public interest are governed by the administrative law.

**2646** [2612]. The owner of an immovable cannot bind himself not to alienate it, and if he does so the alienation is valid, without prejudice to the personal rights of action which the act may give rise to against him.

**2647** [2613]. Donors or testators cannot forbid the donees or successors to their rights to alienate the movable or immov-

able property which they have donated or left to them by testament, for a longer term than ten years.

**2648** [2614]. The owners of real property cannot constitute emphyteutic rights therein, nor surface rights, nor subject it to rent charges or income charges for terms exceeding five years, whatever be the purpose of their imposition; nor subject it to any entail whatsoever.

**2649** [2615]. The owner of an estate cannot make any excavations nor dig any pits upon his land which are liable to cause the destruction of buildings or plantings on a neighboring estate, or cause the caving in of land.

**2650** [2616]. Every owner must maintain his buildings in such manner that the fall or detachment of material therefrom cannot damage neighbors or transients, under the penalty of paying the damages which he may cause them through his negligence.

**2651** [2617]. The proprietor of buildings cannot divide them horizontally among a number of owners, either by contract or acts of last will.

**2652** [2618]. The noise caused by an industrial establishment must be considered as attacking the rights of the neighbors, when its intensity or continuity becomes intolerable to them and exceeds the measure of the ordinary discomforts of the neighborhood.

**2653** [2619]. Even when the work or the establishment which injures the neighbors has been authorized by the administration, the judges may grant indemnity to the neighbors, as long as such establishments are in existence. The indemnity is determined by the material injury caused the neighboring properties, and according to the diminution they suffer in their market or sale value.

**2654** [2620]. Works or constructions which, while not causing the neighbors positive damage or constituting an infringement of their right of property, merely result in depriving them of advantages which they have theretofore enjoyed, do not entitle them to indemnity for damages.

**2655** [2621]. No one can construct near a party or dividing wall, any well, sewer, latrine, or aqueduct which may

cause dampness; stables, deposits of salt or corrosive substances, machinery operated by steam, or other apparatus, or enterprises dangerous to the safety, solidity and healthfulness of buildings, or noxious to the neighbors, without observing the distances prescribed by the regulations and usages of the country, all without prejudice to the provisions of the foregoing article. In the absence of regulations, recourse shall be had to the opinion of experts.

**2656** [2622]. A person who wishes to build a chimney or a hearth against a party wall must cause a counterwall of brick or stone, sixteen centimeters in thickness, to be built.

**2657** [2623]. A person who wishes to build a furnace or forge against a party wall must leave an interval or vacant space of sixteen centimeters between the wall and the furnace or forge.

**2858** [2624]. A person who wishes to sink wells, for any purpose whatsoever, against a party or other wall, must build a counter-wall thirty centimeters in thickness.

**2659** [2625]. Even though they be separated from party or dividing walls, no one can keep in his house deposits of standing waters which may cause pestilential exhalations, or noxious percolations, nor construct works which will transmit to the neighboring houses fetid or pernicious gases, not the result of ordinary necessities or uses; nor forges or machinery which throw out excessive smoke upon the neighboring properties.

**2660** [2626]. The owner of the land adjoining a dividing wall may demolish it whenever he finds it necessary to do so either for the purpose of strengthening its foundation, or to construct it to support additional weight, without any indemnity to the owner or co-owner of the wall, but he is required to raise the new wall immediately.

**2661** [2627]. If it becomes necessary to erect scaffolds or any other temporary service or work on the immovable belonging to the neighbor, for the construction of any work, the owner of such immovable shall not have the right to prevent it, and the indemnity for any damage which he may sustain shall be borne by the person constructing the work.

**2662** [2628]. The owner of an estate cannot have trees thereon within a distance of less than three meters from the dividing line separating it from the adjoining estate, whether it be a rural or urban estate, enclosed or otherwise, and even though both estates consist of woodland. Bushes cannot be had at a distance of less than one meter.

**2663** [2629]. If the branches of trees extend over neighboring constructions, gardens, or courts, the owner of the latter shall have the right to demand that the portion thereof which extends into his property be cut off; and if the roots extend into the neighboring soil, the owner of the soil may have them cut himself, even though the trees, in either case, are at the distances prescribed by the law.

**2664** [2630]. The owners of lands or buildings are obliged, after the promulgation of this Code, to construct the roofs which they may thereafter make in such manner that the rain water will discharge on their own soil, or into streets or public places, and not upon the soil of the neighbor.

**2665** [2631]. When, according to the custom of the town, buildings are constructed in such a manner that the discharge from one part of the roofs falls on another's property, the owner of such property has no right to prevent it. Such a form of construction does not imply a servitude of the estate which receives the discharge, and the owner thereof may make such constructions on the dividing wall as will stop the discharge from the adjoining tenement, but with the obligation of constructing the works necessary in order to cause the water to fall on the estate on which it previously discharged.

**2666** [2632]. The owner of an estate cannot by any construction or work whatsoever cause the waters of wells on his estate, nor those of the service of his house, to flow on the neighboring estate, without prejudice to the provisions hereinafter contained regarding natural or artificial waters which have been taken or brought to the surface there for the needs of industrial establishments.

**2667** [2633]. The owner is obliged under all circumstances to take the necessary measures to cause any water, other than

rain or spring water, to flow on land which belongs to him or on to the public road.

**2668 [2634].** The owner of an estate is not permitted to direct the rain water which has fallen on his own estate upon the neighboring tenement by means of a change in the level of his land.

**2669 [2635].** Rain waters belong to the owners of the estates upon which they fall, or upon which they flow, and they may freely dispose thereof, or divert them, without detriment to the lower estates.

**2670 [2636].** Any person may collect the rain water which falls in public places, or which runs through public places, even though by diverting its natural course, without the neighbors being permitted to set up a vested right.

**2671 [2637].** Waters which rise on private lands belong to the owners of such lands, and they may freely use them and change their natural course. The mere fact that they run through the lower tenements does not vest any right whatsoever in the owners of the latter. But if they constitute the principal tributary of a river, or are necessary to a town, they are subject to expropriation for purposes of public utility.

**2672 [2638].** The owner of a spring who permits the waters thereof to flow upon the lower tenements, cannot apply them to a use which would render them detrimental to the lower estates.

**2673 [2639].** The owners of lands bordering on rivers or canals which are used for communication by water, are obliged to leave a street or public road thirty-five meters wide to the edge of the river or canal, without receiving any indemnity therefor. The riparian owners cannot make any constructions within said space, nor repair old existing constructions, nor deteriorate the land in any manner whatsoever.

**2674 [2640].** If the river or canal crosses a city or town, the width of the public street may be modified by the respective municipality, but it cannot be left at less than fifteen meters.

**2675 [2641].** If the rivers are navigable, the use of the waters thereof in such manner as to obstruct or interfere

with navigation or the free passage of any object of river transportation is prohibited.

**2676** [2642]. Riparian owners are forbidden, without a special grant from a competent authority, to change the natural course of waters, to excavate in the channel thereof, or to take them in any manner and in any volume for their lands.

**2677** [2643]. If the waters of rivers become still, flow with less or greater strength, or deviate from their natural channel, the riparian owners affected by such changes may remove the obstacles, construct defensive works, or repair those destroyed, in order to restore the waters to their former condition.

**2678** [2644]. If such changes are due to a fortuitous event or *force majeure*, the necessary expense of restoring the waters to their former state shall be borne by the State or Province. If due to the fault of one of the riparian owners, through his construction of an injurious work or the destruction of defensive works, the cost shall be paid by him, in addition to indemnity for the damage.

**2679** [2645]. Not even with the permission of the State, a Province or a municipality, can any riparian owner, without the consent of the other riparian owners, dam the waters of rivers or creeks in such manner as to cause them to overflow the limits of their property, by deepening the river or creek in its upper part, or flooding the lower estates; nor arrest the course of waters in such a manner as to deprive the neighbors thereof.

**2680** [2646]. Not even with the permission of the State, a Province or a municipality, can a riparian owner extend the abutments of his dam beyond the middle of the river or creek.

**2681** [2647]. The lower lands are compelled to receive the waters which descend naturally from the upper lands, provided the work of man has not contributed thereto.

**2682** [2648]. The provisions of the preceding article do not apply to subterranean waters which are brought to the surface by means of some artificial work; nor to rain waters falling from roofs, nor to the reservoirs in which they have

been collected, nor to used water which has been employed for domestic cleansing or in the work of factories, unless mixed with the rain water.

**2683** [2649]. The lands below are also obliged to receive the sand and stones which rain waters carry with them in their course, without the owners of the upper lands having the right to claim them.

**2684** [2650]. The owners of the lower lands are obliged to receive the subterranean waters brought to the surface by the work of man, such as fountains, artesian wells, etc., when on account of their abundance it is not possible to contain them within the upper lands, upon payment to them of a just indemnity for any damage sustained thereby.

**2685** [2651]. The owner of the lower land cannot construct any dike which contains or causes to flow back upon the upper land, the water, sand or stones which naturally descend thereon, and even when the work has been seen by and is known to the owner of the upper land, he may demand its demolition, if he had not understood the damage it would cause him, and if the work has not been in existence for a period of twenty years.

**2686** [2652]. A person who constructs works to prevent the entrance of waters which his land is not obliged to receive, is not answerable for the damage which such works cause.

**2687** [2653]. The owner of the land above is forbidden to do anything whereby the burden of the lower tenement is made more onerous, such as directing the water to a single point, or in any way increasing the force of the flow to the possible injury of the land below.

**2688** [2654]. No part owner can open windows or apertures in a party wall without the consent of the co-owner.

**2689** [2655]. The owner of a wall which is not a party wall adjoining property belonging to another may open windows therein to admit light at a height of three meters from the floor of the room which it is desired to light, with iron gratings having openings of not more than three inches.

**2690** [2656]. These openings to admit light do not constitute a servitude and the owner of the adjoining estate or



property may acquire a part ownership in the wall and close the windows for the admission of light, if he builds and uses the party wall as a support.

**2691** [2657]. A person who receives light through windows opened in his wall does not have the right to prevent the raising of a wall on the adjoining property which closes them and deprives him of light.

**2692** [2658]. A view upon the adjoining estate; whether enclosed or otherwise, cannot be had by means of windows, balconies or other projections, unless there is an intervening distance of three meters from the dividing line.

**2693** [2659]. Nor can there be any side or oblique views upon property belonging to another, unless there is a distance of sixty centimeters.

**2694** [2660]. The distances prescribed in the foregoing articles shall be measured from the outside line of a wall which has no projections; and from the outside line of the projections, where there are such; and as to oblique views, from the line which separates the two properties.

## TITLE VII. OF IMPERFECT OWNERSHIP.

**2695** [2661]. Imperfect ownership is the revocable or fiduciary real right of a single person in a movable or immovable belonging to him, or that reserved by the perfect owner of a thing who conveys the beneficial ownership thereof only.

**2696** [2662]. Fiduciary ownership is that acquired in a singular *fidei commissum*, to last only until the fulfillment of a resolutive condition, or until the expiration of a resolutive term, the thing to revert then to a third person.

**2697** [2663]. Revocable ownership is that which has been transferred under a title which is revocable at the will of the transferor; or, when the actual owner can be deprived of the ownership for a cause arising out of his title.

**2698** [2664]. The ownership is not considered revoked when the person who holds the thing as owner is adjudged to deliver it by virtue of an action for annulment or rescission,

or an action against a fraudulent act, or as restitution of payment not due. In such cases it is held that the ownership had been transferred in a temporary manner only.

**2699** [2665]. The revocation of ownership transferred by means of a title revocable at the will of the person who granted it is effected by the mere manifestation of his will.

**2700** [2666]. From the provisions of the preceding article is excepted a covenant of avoidance in a contract of sale, which does not operate to revoke the ownership except as a consequence of an action wherein the revocation is declared, when the parties do not agree as to the existence of the acts upon which it depended.

**2701** [2667]. The same exception applies to a resolutive condition imposed in a case of ingratitude on the part of a donee or legatee, and to the non-performance of the charges imposed upon the donee or legatee.

**2702** [2668]. Revocable ownership is extinguished by the fulfillment of the legal clause contained in the juridical act whereby the ownership was transferred, or of the resolutive condition or resolutive term to which its duration was subject.

**2703** [2669]. The revocation of ownership shall always have a retroactive effect to the date on which it was acquired, in the absence of an express provision to the contrary in the law or in the juridical acts which provided therefor.

**2704** [2670]. If the ownership is revoked with retroactive effect, the former owner is authorized to take the immovable free of all charges, servitudes or mortgages which the dispossessed owner or the third possessor has laid thereon; but he is obliged to respect the administrative acts of the dispossessed owner, such as the rentals or leases made by him.

**2705** [2671]. The revocation of the ownership of movable things has no effect against third grantees, usufructuaries or pledgees, except in so far as they are subject to a personal obligation to return the thing owing to their bad faith.

**2706** [2672]. When by the law, or by an express stipulation in the juridical acts which create the revocable ownership, the revocation does not have a retroactive effect, the grants made by the owner dispossessed shall stand, as well as any real rights which he has constituted in the thing.

### TITLE VIII. OF CO-OWNERSHIP.

**2707** [2673]. Co-ownership is a real right of property which belongs to a number of persons in an undivided part of a movable or immovable thing.

**2708** [2674]. Community of property which does not consist of things is not co-ownership.

**2709** [2675]. Co-ownership is created by contract, by acts of last will, or in the cases designated by the law.

**2710** [2676]. Each co-owner enjoys, with respect to his undivided interest, the rights inherent in ownership, compatible with the nature thereof, and he may exercise them without the consent of the other co-owners.

**2711** [2677]. Each co-owner may alienate his undivided interest, and his creditors may have it attached and sold before the division of the thing among the co-owners.

**2712** [2678]. Each of the co-owners may mortgage his undivided interest in an immovable held in common, but the result thereof is subject to the result of the partition, and it shall have no effect whatsoever if the immovable is included in the lot of another co-owner, or is adjudicated to him at a public sale.

**2713** [2679]. Each of the co-owners may bring an action against a third holder to revendicate the thing in which he has an undivided interest; but he cannot revendicate a material and specified part thereof.

**2714** [2680]. None of the co-owners can, without the consent of all of the others, exercise over the thing held in common, or even as to the smallest part thereof, physically determined, any material or juridical acts which import the actual and immediate exercise of the right of ownership. The objection of one is sufficient to prevent what the majority may wish to do in this respect.

**2715** [2681]. None of the co-owners can subject the thing owned in common to material innovations, without the consent of all of the others.

**2716** [2682]. A co-owner can neither alienate, nor consti-

tute servitudes or mortgages to the prejudice of the right of the co-owners. A lease or rental made by one of them is void.

**2717** [2683]. Nevertheless the alienation, constitution of servitudes or mortgages, the lease or rental made by one of the co-owners becomes effective in part or in whole, if, as a result of the division, all or part of the thing held in common is included in his lot.

**2718** [2684]. Each co-owner may enjoy the thing owned in common in accordance with the use to which it is destined, provided he does not impair it in his private interest.

**2719** [2685]. Each co-owner may bind the co-owners, in proportion to their interests, for the cost of the preservation or repair of the thing owned in common; but they may release themselves of this obligation by relinquishing their right of ownership.

**2720** [2686]. If the co-owner or co-owners fail to contribute, they shall pay interest to the co-owner who has defrayed them, and the latter shall have the right to retain the thing until payment has been made.

**2721** [2687]. A co-owner who contracts debts in favor of the community during its existence, is obligated alone and has a right of action against the other co-owners for the recovery of what he has paid.

**2722** [2688]. If the debt was contracted by the co-owners collectively, without any determination of shares, and without solidarity having been stipulated, they are obligated to the creditor in equal parts, reserving the right of each against the others for the recovery of whatever he has paid in excess of the part payable by him.

**2723** [2689]. In the real charges which encumber the thing, such as a mortgage, each of the co-owners is obligated for the entire debt.

**2724** [2690]. When any of the co-owners is insolvent, his share in the thing must be distributed among the others in proportion to the interest they have therein, and according to which they have contributed to the payment of the part of the credit payable by the insolvent.

**2725** [2691]. Every co-owner is a debtor to the others, according to their respective shares, for the rents or fruits he has collected from the thing owned in common, as well as for the amount of the damage he has caused them.

**2726** [2692]. Each co-owner is authorized to demand at any time the division of the thing owned in common, if not subject to a forced indivision.

**2727** [2693]. Co-owners cannot waive in an indefinite manner the right to demand a division; but they may agree on a suspension of the division for a term not to exceed five years, and renew this agreement as often as they deem it advisable.

**2728** [2694]. When the co-ownership of the things was constituted by donation or testament, the testator or donor may stipulate the condition that the thing donated or bequeathed shall remain undivided for the same space of time.

**2729** [2695]. The division among the co-owners is declarative of ownership only and does not transfer it, in the sense that each owner is to be considered as if he had been, since the origin of the indivision, the exclusive owner of the part allotted to him, and as if he had never had any right of ownership in the shares allotted to the other co-owners.

**2730** [2696]. It shall have the same effect when, by public sale, one of the co-owners has become the exclusive owner of the thing owned in common, or when by any act under an onerous title, absolute indivision has ceased, the thing passing to the ownership of one of the co-owners.

**2731** [2697]. The consequences of the retroactivity of the division are the same as those of the division of successions prescribed in this Code.

**2732** [2698]. The rules relating to the division of successions, to the mode of making it and to the effects it produces, must be applied to the division of particular things.

**CHAPTER I.****Of the Administration of the Thing Owned in Common.**

**2733 [2699].** When on account of the nature of the thing owned in common or the opposition of one of the co-owners, the use or enjoyment of the thing held in common, or its possession in common, is impossible, all of the co-owners shall decide whether the thing shall be placed in the hands of an administrator, or rented or leased.

**2734 [2700].** If any of the co-owners do not agree upon the adoption of either of these expedients, nor avail himself of his right to demand the division of the thing, the decision of the majority shall prevail, and in such case the majority shall determine the mode of administration and appoint and remove the administrators.

**2735 [2701].** The co-owner who assumes the administration shall be considered the mandatary of the others, and the provisions governing mandates shall be applicable to him, and not the provisions relating to managing partners.

**2736 [2702].** When it is decided to rent or lease the thing, the co-owner who offers the same lease price or rental that a stranger does shall be given preference over the stranger.

**2737 [2703].** No resolution is valid unless adopted at a meeting of all of the co-owners, or of their legitimate representatives.

**2738 [2704].** The majority shall not be numerical, but in proportion to the value of the interests of the co-owners in the thing held in common, even though such majority be held by one of them alone.

**2739 [2705].** The majority shall be absolute, that is to say, it must exceed the value of one-half of the thing. In the absence of an absolute majority nothing shall be done.

**2740 [2706].** In the event of a tie and when the co-owners do not prefer to leave the decision to chance or arbitration, the judge shall summarily decide the question on the petition of any of them, after hearing the others.

**2741** [2707]. The fruits of the thing owned in common, in the absence of a stipulation to the contrary or a disposition of last will, shall be divided by the co-owners in proportion to the value of their shares.

**2742** [2708]. When there is any doubt as to the value of the share of each one of the co-owners, the presumption is that their shares are equal.

**2743** [2709]. Any co-owner who manages the thing held in common without a mandate from the others, is considered as the manager of another's business (*negotiorum gestor*).

## CHAPTER II.

### Of Forced Indivision.

**2744** [2710]. There is forced indivision when the co-ownership is of things subject as indispensable accessories to the common use of two or more estates belonging to different persons, and none of the co-owners shall be permitted to demand the division.

**2745** [2711]. The rights vested in such cases in the co-owners are not the rights appurtenant to servitudes, but those appurtenant to co-ownership.

**2746** [2712]. Each of the co-owners may use the totality of the thing owned in common and its various parts as if it were his own thing, under the condition that he shall not devote it to other uses than those to which it is destined, nor interfere with the equal right of the co-owners.

**2747** [2713]. The destination of the thing owned in common is determined, if there is no agreement, by its nature and by the use to which it has been devoted.

**2748** [2714]. The co-owners of the thing held in common cannot make use thereof except for the needs of the estates in the interest of which the thing has been left undivided.

**2749** [2715]. There is also forced indivision when the law forbids the division of a thing held in common, or when

it is prohibited by a valid and temporary stipulation of the co-owners, or by a disposition of last will, also temporary, not exceeding in either case a term of five years, or when the division would be injurious for any reason, in which case it must be delayed as long as necessary to prevent any damage to the co-owners.

**2750** [2716]. The co-ownership of walls, ditches and fences which serve to separate two adjoining estates, is of forced indivision.

### CHAPTER III.

#### Of the Joint Ownership of Walls, Fences and Ditches.

**2751** [2717]. A wall is a party wall and the common property of the owners of the adjoining estates who have had it constructed at their cost on the line which separates the two estates.

**2752** [2718]. Any wall which serves as a dividing wall between two buildings is presumed to be a party wall as to its entire height to the top of the lower building. The part extending above the latter building is considered to belong exclusively to the owner of the higher building, in the absence of proof to the contrary, by public or private instruments, or any material signs which show the party character of the entire wall, or that it is not a party wall even as to the lower part of the building.

**2753** [2719]. Walls are presumed to be party walls only when they separate from each other buildings, and not courts, gardens, farms, etc., even though the latter are enclosed on all sides.

**2754** [2720]. The public or private instruments which are set up to contest the joint ownership of a party wall or fence, must be acts common to the two parties or to their predecessors in interest.

**2755** [2721]. When there is a conflict between the instrument which establishes the joint ownership and signs which



point to its non-existence, the instrument prevails over the signs.

**2756 [2722].** The co-owners of a party wall are bound to pay the cost of the repair or reconstruction of the wall in proportion to their interests.

**2757 [2723].** Each of the co-owners of a wall may release himself from contributing to the cost of the preservation of the wall by relinquishing the joint ownership, provided the wall does not form part of a building which belongs to him, and that the repair or reconstruction has not become necessary through an act of his.

**2758 [2724].** The power to relinquish the joint ownership is vested in each of the neighbors, even in places where enclosures are compulsory; and as soon as the relinquishment is made, it has the effect of conferring upon the other the exclusive ownership of the wall.

**2759 [2725].** A person who builds first in a town or its suburbs, in a place not as yet surrounded by walls, may rest one-half of the wall which he constructs on the land of his neighbor, provided the wall is of stone or brick to a height of three meters, and the entire thickness thereof does not exceed eighteen inches.

**2760 [2726].** The owner of an estate may compel his neighbor to contribute to the construction and repair of walls three meters in height and eighteen inches thick for the enclosure and division of their adjoining estates, when situated within the limits of a town or its suburbs.

**2761 [2727].** A neighbor called on to contribute to the construction of a dividing wall, or to the repair thereof in the case of the preceding article, may relieve himself of this obligation by ceding one-half of the land on which the wall is to be built, and renouncing his joint ownership.

**2762 [2728].** A person who has built an enclosure wall in a place where enclosure is compulsory, on his own land and at his own expense, cannot compel his neighbor to reimburse him for one-half the cost thereof and the land on which it is built, unless the neighbor desires to make use of the dividing wall.

**2763 [2729].** Dividing walls must be raised to the height

prescribed in each municipality; in the absence of any regulation, the height shall be three meters.

**2764** [2730]. The joint ownership entitles each of the co-owners to make use of the party wall for all purposes to which it is destined by its nature, provided the wall is not damaged nor its solidity impaired, and that the exercise of similar rights by the neighbor are not interfered with.

**2765** [2731]. Each of the co-owners may make constructions of any kind against the party wall, place beams or joists through the whole thickness of the wall, without prejudice to the right of the other neighbor to have them withdrawn to the middle of the wall if he also desires to fix beams, or build the flue of a chimney therein; each of the co-owners may also open cupboards or niches even beyond the middle of the wall, provided he causes no damage to the neighbor or injury to the wall.

**2766** [2732]. Each of the co-owners may increase the height of a party wall at his own expense without indemnifying his neighbor for the greater weight placed thereon.

**2767** [2733]. When the party wall cannot support the additional height which it is sought to give it, the person who desires to raise it must reconstruct the entire wall at his own expense and take the additional thickness from his own land. The neighbor cannot claim any indemnity on account of the inconvenience to which he is put by the execution of the work.

**2768** [2734]. In the case of the preceding article, the new wall, even when built by one of the owners, is a party wall to the height of the old wall, and throughout its thickness, without affecting the right of the person who has given the excess ground to recover such ground if the wall is ever demolished.

**2769** [2735]. A neighbor who has not contributed to the cost of increasing the height of the wall may always acquire a joint ownership in the portion raised upon payment of one-half of the cost and the value of one-half of the land, if the thickness of the wall has been increased.

**2770** [2736]. Any owner whose estate abuts on a wall which is not a party wall has the power to acquire a joint

interest in the entire wall, or only in that part on which the estate belonging to him abuts, to the height of the dividing walls, upon payment of one-half the value of the wall, as constructed, or of the portion in which he acquires a joint interest, as well as one-half of the value of the ground upon which it rests; but he cannot limit his acquisition to a part of the thickness of the wall only. If he desires to acquire only a portion to the height which dividing walls must have, he is obliged to pay the cost of the wall from its foundation.

**2771 [2737].** One of the neighbors cannot make changes in a party wall which will prevent the other from exercising an equal and reciprocal right. Nor can he reduce the height or thickness of the wall, nor make any opening therein, without the consent of the other neighbor.

**2772 [2738].** The provisions of the preceding article do not apply to walls fronting on streets, squares or public roads, respecting which the special regulations applicable thereto shall be observed.

**2773 [2739].** A person who has relinquished his party interest, in order to release himself from the obligation to contribute to the repair or reconstruction of a wall, always has the right to acquire the part ownership thereof subject to the conditions stated.

**2774 [2740].** The acquisition of the part ownership produces the effect of putting the neighbors on a footing of perfect equality, and vests in the person who acquires it the power to demand the discontinuance of works, or the closing of openings or windows for lighting purposes, placed in the party wall and incompatible with the rights conferred by joint ownership.

**2775 [2741].** A neighbor who has acquired the part ownership cannot make use of the rights conferred thereby to interfere with the servitudes with which his estate is charged.

**2776 [2742].** In rural sections the common boundary enclosures must be made at the expense of the adjoining estates, if both estates are enclosed. When one of the estates has no fencing at all, the owner thereof is not obliged to contribute to the dividing walls, ditches, or fences.

**2777** [2743]. Any enclosure which separates two rural estates is considered a party enclosure, unless one of the tracts is not fenced, or there is proof to the contrary.

**2778** [2744]. The provisions of the preceding articles relating to party walls, as to the rights and obligations of the co-owners *inter se*, apply to ditches or fences or other separations of lands in like circumstances, in so far as applicable.

**2779** [2745]. The trees in party fences or ditches are also presumed to be owned jointly, and each co-owner may demand that they be uprooted if they cause him damage. And if they fall owing to some accident, they cannot be replanted without the consent of the other neighbor. The same provisions shall apply to trees which are owned jointly owing to their trunks being located at the meeting point of two tracts which belong to different persons.

## CHAPTER IV.

### Of Joint Ownership by Confusion of Limits.

**2780** [2746]. A person who possesses lands the limits of which are confused with those of an adjoining estate, is considered a co-owner with the possessor of said land, and has the right to demand that the confused limits be ascertained and established.

**2781** [2747]. When the limits of the lands are a matter of dispute, or when, owing to the destruction of the boundary marks, there are none to indicate it, the adjoining owners shall have the right to bring an action of revendication for the restitution to one of the possessors of the land which is in the possession of the other.

**2782** [2748]. A suit to determine boundaries must be based essentially on the contiguity and confusion of two rural estates. It does not lie for the division of urban estates.

**2783** [2749]. This action lies only in behalf of those who have real rights in the land, against the owner of the adjoining tenement.

**2784** [2750]. It may be directed against the State with respect to lands subject to private ownership. The determination of the boundaries of tracts subject to public ownership pertains to the administrative jurisdiction.

**2785** [2751]. The possession in good faith of a larger tract of land than that set forth in the titles does not benefit the person who has held it.

**2786** [2752]. The cost of improvements of the dividing line are common to the adjoining owners; but if the demarcation is preceded by the ascertainment of boundaries, the cost of determination of the boundaries shall be divided proportionately between them according to the area of the land of each.

**2787** [2753]. The determination of the boundaries of the tracts of land may be made by an agreement between the owners reduced to a public instrument. It is void in any other form. The agreement, the survey, and all the antecedents which have formed the basis therefor, must be presented to the judge for his approval; and if approved, the instrument, if executed by capable persons, and the survey made, shall serve thereafter as a title of ownership, provided no damage is caused a third person. The act may be attacked thereafter only for the causes which permit the retraction of an agreement.

**2788** [2754]. A judicial determination of boundaries shall be made by a surveyor, and the procedure to be followed is that prescribed by the laws of procedure.

**2789** [2755]. When it is not possible to determine the boundaries of tracts, either by ancient marks or by possession, the section of land in doubt shall be divided between the adjoining estates as the judge may deem proper.

## TITLE IX. OF REAL ACTIONS.

**2790** [2756]. Real actions are the means of enforcing the declaration in court of the existence, plenitude and liberty of real rights, with the accessory effect, if it lie, of indemnity for the damage caused.

**2791 [2757].** Real actions arising out of a right of property are: an action of revendication, a confessory action, and a negatory action.

## CHAPTER I.

### Of Revendication.

**2792 [2758].** An action of revendication is an action arising out of the ownership which everyone has of particular things, whereby the owner who has lost the possession thereof claims it of and revendicates it from the person who is in possession of the thing.

**2793 [2759].** All particular things held in ownership, whether movable or real, may be the object of an action of revendication; and likewise things which on account of their representative character are considered movables or immovables.

**2794 [2760].** Titles of credits not payable to bearer can be the object of revendication, even though they have been assigned or endorsed, if their ownership has not been transferred, as long as they are in the hands of the imperfect possessor, or mere holder.

**2795 [2761].** The ideal parts of movables or immovables can also be the object of an action of revendication by each of the co-owners against each of the co-possessors.

**2796 [2762].** Property which does not consist of things, future things, accessory things, even when they become separated from the principal things, unless the latter are subject to an action of revendication, movable things the identity of which cannot be established, such as money, instruments payable to bearer, and fungible things, cannot be the object of an action of revendication.

**2797 [2763].** If the thing has been destroyed in part, or if accessories thereof only remain, the part remaining or the accessories may be the object of an action of revendication;

provided that what it is sought to revendicate is determined in a certain manner.

**2798** [2764]. A universality of property, such as a disputed succession, cannot be the object of an action of revendication; but a universality of things can be.

**2799** [2765]. A person who has lost a movable thing, or from whom it has been stolen, may revendicate it, even though held by a third possessor in good faith.

**2800** [2766]. The qualification that a thing has been stolen is applicable only to the fraudulent abstraction of a thing, belonging to another, and not to an abuse of trust, the violation of a deposit, nor to any act of deceit or false pretenses whereby the owner was made to relinquish the possession of the thing.

**2801** [2767]. An action of revendication does not lie against the possessor of a movable thing in good faith who has paid the price thereof to the person to whom the complainant had entrusted it for its use, to guard it, or for any other purpose.

**2802** [2768]. A person who revendicates a movable thing, which has been stolen or lost, from a third possessor in good faith, is not obliged to reimburse him the price he paid therefor, excepting a case in which the thing was sold with other similar things at a public sale or in a shop where similar articles are sold.

**2803** [2769]. A person who has acquired a thing stolen or lost, outside the exceptional case mentioned in the preceding article, cannot, by selling the thing at a public sale or in a shop where similar things are sold, better his position, nor impair that of the owner authorized to revendicate it.

**2804** [2770]. The advertisements of thefts or losses are not sufficient to raise a presumption of the bad faith of the possessor of things stolen or lost who acquired them after the publication of such advertisement, in the absence of proof that he had knowledge thereof when he acquired the things.

**2805** [2771]. A person who has bought a thing lost or stolen from a suspicious person who does not customarily sell such things, or who did not have the capacity or means with which to acquire it, is considered a possessor in bad faith.

**2806** [2772]. The action of revendication may be brought against the person in possession of the thing, by any person who has a perfect or imperfect real right therein.

**2807** [2773]. An action of revendication does not lie against the heir of the possessor unless the heir himself is the possessor of the thing the object of the action, and he is not bound as to the share which he has inherited from the deceased possessor, except as to the interest he has in the possession.

**2808** [2774]. The action does not lie in behalf of a person who does not have the right to possess the thing at the time the action is brought, even though he has acquired it when the judgment is rendered, nor in behalf of one who does not have the right of possession when the judgment is rendered, even though he had it when he began the action.

**2809** [2775]. An action of revendication of movable things lies against the possessor at the time who obtained them by a wrongful act against the complainant.

**2810** [2776]. If the thing is an immovable, the action lies against the possessor who obtained it by the ouster of the plaintiff in said action.

**2811** [2777]. It also lies against the possessor in good faith at the time who obtained it under an onerous title from a grantor in bad faith, or from a successor bound to return it to the plaintiff in said action, such as the borrower *in commodatum*.

**2812** [2778]. Whether the thing be movable or immovable, the action of revendication lies against the possessor at the time, even though a possessor in good faith, who obtained it from the plaintiff in the action by a void or annulled act; and against the possessor at the time, even though a possessor in good faith, who obtained it from a grantor in good faith, if he obtained it under a gratuitous title and the grantor was under the obligation of returning it to the person who seeks the revendication, such as the successor of the borrower *in commodatum* who believed that the thing belonged to his predecessor in interest.

**2813** [2779]. In the cases in which, according to the preceding articles, an action of revendication lies against the new



possessor, the plaintiff may elect between bringing it directly, or bringing a subsidiary action against the grantor or his heirs, for indemnity for the damage caused by the alienation; and if full indemnity for the damage is obtained from the latter, the right to revendicate the thing is terminated.

**2814** [2780]. Whether revendication does or does not lie against the new possessor, if the latter obtained the thing from the grantor responsible therefor, and has not as yet paid its price, or has paid it in part only, the person who seeks the revendication has a right of action against the new possessor to recover the price, or whatever he still owes thereon.

**2815** [2781]. A creditor who has received in good faith a movable thing in pledge may oppose the action of revendication brought against him by the owner, until his credit is paid.

**2816** [2782]. The action of revendication may be directed against a person who possesses in the name of another. The latter is not obliged to answer the complaint if he declares the name and residence of the person in whose name he holds possession. Upon his doing so the action must be directed against the real possessor of the thing.

**2817** [2783]. A defendant who denies that he is the possessor of the thing must be adjudged to transfer it to the plaintiff, when the latter proves that it is in the possession of the former.

**2818** [2784]. A person who claims in bad faith that he is the possessor when such is not the case, shall be adjudged to pay indemnity for any damage caused by this deception to the person who seeks the revendication.

**2819** [2785]. An action of revendication may be brought against a person who by *dolus* or some act on his part has ceased to possess in order to make the revendication more difficult or impossible.

**2820** [2786]. If the thing which it is sought to revendicate is a movable and there are grounds to fear that it will be lost or deteriorate in the hands of the possessor thereof, the person who seeks to revendicate it may demand its sequestra-

tion, or that the possessor give him sufficient security for the return of the thing if judgment is rendered against him.

**2821 [2787].** The actions accessory to revendication against a possessor in bad faith, for the return of the fruits and the recovery of damages on account of the deterioration which the thing has suffered at his hands, may be directed against the heirs as to the share of each in the inheritance.

**2822 [2788].** A person who brings an action of revendication may, during the pendency of the action, prevent the possessor from damaging the thing which it is sought to revendicate.

**2823 [2789].** If the title of the person who seeks the revendication and proves his right to possess the thing, is of a date subsequent to the possession of the defendant, it does not constitute sufficient ground on which to base the complaint, even though the defendant presents no title whatsoever.

**2824 [2790].** If he presents titles of ownership antedating the possession, and the defendant does not present any title, the presumption is that the person who transferred the title was the possessor and owner of the estate which it is sought to revendicate.

**2825 [2791].** When both the plaintiff and the possessor against whom the action lies present titles of ownership given by the same person, the one who was first placed in possession of the estate which it is sought to revendicate is considered the owner thereof.

**2826 [2792].** When both the defendant and the plaintiff present titles of acquisition from different persons, and it is not possible to establish which of them is the real owner, the presumption is that the person who has possession is the owner.

**2827 [2793].** When the thing revendicated is in the hands of the defendant against whom judgment has been rendered, he must return it wherever it is; but if after the complaint was filed he carried it to some other more distant point, he must return it to the place where it was.

**2828 [2794].** When the object sought to be revendicated is an immovable, the defendant adjudged to return it sat-

isfies the judgment by vacating it and leaving it in such condition as to permit the person who revendicates it to take possession thereof.

## CHAPTER II.

### Of the Confessory Action.

**2829** [2795]. A confessory action is that arising out of acts which in some manner prevent the full exercise of real rights or active servitudes, and the purpose of which is to obtain the re-establishment of the rights and servitudes.

**2830** [2796]. A confessory action lies in behalf of the possessors of immovables who have a right of possession, when prevented from exercising the rights inherent in possession determined in this Code; in behalf of the real or putative beneficiaries of active personal servitudes, when prevented from exercising them; in behalf of mortgagees of dominant tenements, the possessors of which are prevented from exercising the rights inherent in their possession.

**2831** [2797]. A confessory action lies against any person who prevents the exercise of rights inherent in the possession of another or his active servitudes.

**2832** [2798]. The plaintiff need only prove his right to possess the dominant immovable, when the right the exercise of which is prevented is not a servitude; and his right to possess the dominant tenement, and his active servitude, or his right of mortgage, when such is the right interfered with.

**2833** [2799]. When the dominant or servient tenement belongs to possessors who have a right of possession, the confessory action lies in behalf of each of them and against each of them, in the cases designated in the preceding articles; and the judgments rendered shall prejudice or benefit all with respect to their principal effect, but not with respect to the accessory effect of indemnity for damages.

**CHAPTER II.****Of the Negatory Action.**

**2834** [2800]. A negatory action is that which lies in behalf of the possessors of immovables against persons who interfere with their liberty of exercise of real rights, and its purpose is to obtain the re-establishment of such liberty.

**2835** [2801]. The negatory action lies in behalf of the possessors of immovables and of mortgagees who are prevented from freely exercising their rights.

**2836** [2802]. It lies against any person who interferes with the right of possession of another, even though he be the owner of the immovable, by claiming thereover some servitude which is not owing.

**2837** [2803]. The action must have as an accessory object to deprive the defendant of the subsequent exercise of a real right, and reparation for the damages which its previous exercise may have caused him, and even to compel the defendant to give bond to abstain therefrom.

**2838** [2804]. Its object may also be the reduction of the exercise of a real right to its real bounds.

**2839** [2805]. The plaintiff need prove only his right of possession or his right of mortgage, without the necessity of proving that the immovable is not subject to the servitude which it is sought to impose upon it.

**2840** [2806]. When it is proved that the act of the defendant does not constitute the exercise of a real right, even though the possessor is temporarily prevented from disposing of his right, the action, if damage has been caused, shall be tried as a merely personal action.

**TITLE X. OF USUFRUCT.**

**2841** [2807]. Usufruct is the real right to use and enjoy a thing the ownership of which is vested in another, provided its substance is not changed.

**2842 [2808].** There are two kinds of usufruct: perfect usufruct, and imperfect or quasi-usufruct. Perfect usufruct is that of things which the usufructuary can enjoy without changing their substance, even though they may deteriorate in time or by use. Quasi-usufruct is that of things which would be useless to the usufructuary if he did not consume them or change their substance, such as grain, money, etc.

**2843 [2809].** The usufruct of merchandise is a pure and simple usufruct, and the usufructuary may alienate it. The respective rights are determined by the value which has been given it, or by the inventory which determines its quality and quantity.

**2844 [2810].** Perfect usufruct does not vest in the usufructuary the ownership of the things subject to such usufruct, and he must preserve them for return to the owner upon the termination of the usufruct.

**2845 [2811].** Quasi-usufruct transfers to the usufructuary the ownership of the things subject to such usufruct, and he may consume them, sell them, or dispose of them as he deems best.

**2846 [2812].** Usufruct is constituted:

1. By an onerous or gratuitous contract.
2. By acts of last will.
3. In the cases designated by the law.
4. By prescription.

**2847 [2813].** It is established by an onerous contract when it is the direct object of a sale, an exchange, a partition, a transaction,<sup>7</sup> etc., etc., or when the vendor grants solely the naked ownership of an estate, reserving its enjoyment to himself.

**2848 [2814].** It is established by a gratuitous contract when the donor grants only the naked ownership of the thing, and reserves to himself its enjoyment; or when he gives the usufruct only, or when he transfers to one person the right of ownership and to another the enjoyment of the thing.

**2849 [2815].** It is established by testament when the testator bequeaths only the enjoyment of the thing, reserving

<sup>7</sup> See note to Art. 758 [724].

the naked ownership to his heir, or when he devises to one person the naked ownership, and bequeaths the enjoyment of the thing to another, or when he expressly gives the legatee nothing but the naked ownership.

**2850** [2816]. A legal usufruct is established by the law in the property of minor children in favor of their parents, in accordance with the provisions contained in the *Title Of the Paternal Power*; and also in the property subject to reservation by the widowed spouse, according to the provisions of the *Title Of Marriage*.

**2851** [2817]. Usufruct is acquired by the prescription of the enjoyment of the thing, as provided in Book Fourth for the acquisition of the ownership of property.

**2852** [2818]. The usufruct cannot be separated from the ownership except by a provision of the law, or by the will of the owner. Judges cannot, under the penalty of nullity, constitute any usufruct for any reason whatsoever in the division and partition of property.

**2853** [2819]. In case of doubt the usufruct constituted by a contract is presumed to be onerous; and one constituted by a disposition of last will, gratuitous.

**2854** [2820]. A usufruct established by contract can be acquired only as is the ownership of things, by their tradition; and that established by a testament, by the death of the testator.

**2855** [2821]. A usufruct may be established conjointly and simultaneously in favor of a number of persons, as to separate and undivided parts, purely and simply, or subject to conditions, with or without charges, from a certain day, or to a certain time, and generally with all the modalities<sup>8</sup> to which the owner of the thing deems it advisable to subject it.

**2856** [2822]. When no term has been fixed for the duration of the usufruct, it is understood to have been fixed for the lifetime of the usufructuary.

**2857** [2823]. When there are two or more usufructuaries, the right of accretion does not take place among them, unless

<sup>8</sup> Modality. In civil law, a qualification, whether of restriction or enlargement of the terms of an instrument; specif., a limitation or condition expressed as to time and place of performing a contract (Standard Dict.).

the contrary has been expressly stipulated or provided in the instrument constituting the usufruct.

**2858** [2824]. The owner cannot constitute the usufruct in favor of a number of persons named to enjoy it successively one after the other, even though such persons exist at the time of the constitution of the usufruct.

**2859** [2825]. A usufruct cannot be created to continue after the lifetime of the usufructuary, nor in favor of a person and his heirs.

**2860** [2826]. A usufruct may be bequeathed alternatively, the right of usufruct itself being placed in alternative with some other thing belonging to the testator.

**2861** [2827]. A usufruct is universal when it comprises a universality of property or an aliquot part of the universality. It is particular when it comprises one or more certain and specified objects.

**2862** [2828]. A usufruct cannot be established in favor of juristic persons for more than twenty years.

**2863** [2829]. A usufruct cannot be constituted under a suspensive condition or subject to a suspensive term, unless, having been established by a disposition of last will, the condition will be fulfilled or the term will expire after the death of the testator.

**2864** [2830]. The conditions required for the validity of titles, the purchase of which is to transfer ownership, are likewise required for the validity of titles whereby usufructs are constituted. A usufruct constituted by the law is excepted, and is not dependent upon any act of acquisition.

## CHAPTER I.

### Of the Capacity to Establish a Usufruct and of the Things upon Which it May Be Established.

**2865** [2831]. When the thing the subject of the usufruct is not fungible, a person unable to sell does not have the capacity to constitute a usufruct by an onerous contract;

nor can a person who cannot donate constitute one by a gratuitous contract.

**2866** [2832]. When the thing the subject of the usufruct is fungible, persons who do not have the capacity to make loans for consumption do not have it to constitute a usufruct either by an onerous or gratuitous contract.

**2867** [2833]. Persons incapable of making a testament do not have the capacity to constitute a usufruct to take effect after their death.

**2868** [2834]. The object of a usufruct may consist of the species which can be bequeathed or devised, excepting only those prohibited in this Title.

**2869** [2835]. The provisions of Book Fourth of this Code, as to what is comprised in each species bequeathed or devised, extend in every respect to each of the similar species of objects of a usufruct, in the absence of special provisions in this Title to the contrary.

**2870** [2836]. Persons who do not have the capacity to purchase things movable or immovable are incapable of acquiring the usufruct of things of the same species under an onerous contract or an onerous disposition of last will.

**2871** [2837]. A usufruct cannot be transferred under an onerous or gratuitous contract by a person who is not able to constitute it under either of these titles.

**2872** [2838]. A usufruct may be established on property of any description, whether movable or immovable, corporeal or incorporeal, which can be sold or donated, and on all property which can be left by dispositions of last will. Property which does not consist of things can only be the actual subject of usufruct if represented by its respective instrument. When not represented by an instrument, the things comprised in the credit or in the right coming into the possession of the usufructuary are its future object.

**2873** [2839]. A usufruct cannot be established in property of the State or States, or of the municipalities, unless authorized by a special law.

**2874** [2840]. Nor can it be established on the dotal property of the wife, not even with the consent of the husband and wife.



**2875 [2841].** A fiduciary owner cannot establish a usufruct in the property which is subject to a charge of substitution.

**2876 [2842].** The following cannot be the subject of usufruct: the usufruct itself, the real rights of use and habitation, active real servitudes, apart from the immovables in which they are inherent, a mortgage, antichresis, a pledge apart from the credits secured thereby, and credits which cannot be transferred.

**2877 [2843].** The co-owner of an estate owned in common with others may establish a usufruct in his undivided interest.

**2878 [2844].** A usufruct may be established in things for mere pleasure, such as a place destined to a promenade, statues or pictures, even though they produce no profit.

**2879 [2845].** A usufruct may be constituted in an absolutely unproductive estate.

## CHAPTER II.

### Of the Obligations of the Usufructuary before Entering upon the Use and Enjoyment of the Property.

**2880 [2846].** The usufructuary must, before entering on the enjoyment of the property, make an inventory of the movables and prepare a description of the immovables subject to the usufruct, in the presence of the owner or his representative. If the owner is absent, the judge shall appoint a person to attend the making of the inventory.

**2881 [2847].** When the parties are of full age and capable of exercising their rights, the inventory and the description of the immovables may be made in the form of a private instrument. Otherwise the inventory must be made before a notary public and two witnesses. In either case the inventory is at the cost of the usufructuary.

**2882 [2848].** A failure to comply with the foregoing obligation does not avoid the rights of the usufructuary, nor

subject him to the restitution of the fruits collected; but it raises the presumption that the property was in a good condition when he received it.

**2883 [2849].** Even when the usufructuary has taken possession of the property subject to the usufruct, without an inventory and without objection on the part of the naked owner, he can be compelled to make it at any time.

**2884 [2850].** Even when the testator has relieved the usufructuary of the obligation to make an inventory, and even when he has disposed that if it be sought to compel him to execute one the bequest of the usufruct is to be converted into a devise of the full ownership of the thing, such clauses are considered as not written, whatever be the class of heirs.

**2885 [2851].** A usufructuary, before entering upon the use of the thing subject to the usufruct, must give security that he will enjoy and preserve it in accordance with the laws, and that he will faithfully perform all the obligations imposed upon him by this Code, or by the instrument creating the usufruct, and that he will return the thing upon the termination of the usufruct. The security may be dispensed with by the will of the persons who create the usufruct.

**2886 [2852].** The owner may refuse to deliver to the usufructuary the property subject to the usufruct until he fulfills the obligation imposed in the foregoing article; and if he has permitted him to enter upon the possession of the property without requiring security, he may nevertheless compel him to furnish it at any time.

**2887 [2853].** Delay on the part of the usufructuary in furnishing the security does not deprive him of his right to the fruits from the moment they become due him.

**2888 [2854].** The usufructuary may give in lieu of the security, pledges, deposits in public banks, but not mortgages.

**2889 [2855].** The amount of the security must be sufficient to answer for the value of the movable property and for the amount of the deterioration which the usufructuary might cause to the immovables. If the parties fail to agree, the judge shall fix the amount of the security according to the value of the property subject to the usufruct.

**2890 [2856].** If the usufructuary does not give the security within the time allowed him by the judge, the immovable property shall be given in lease, or sequestrated, under the guaranty of a person charged with making the repairs and turning over the excess of the rental or lease price to the usufructuary.

If the usufruct consists of money, it shall be placed at interest or invested in the purchase of State securities.

Merchandise shall be sold and the proceeds of the sale placed in the same way as money.

The owner may relieve himself from placing at the disposal of the usufructuary furniture which deteriorates by use, and demand that it be sold and the proceeds of the sale thereof placed as the money is.

The owner may, nevertheless, retain the objects of the usufruct until the usufructuary gives the security, without being obliged to pay interest on their estimated value.

**2891 [2857].** If the usufructuary, even when he has not given security, demands under caution juratory<sup>9</sup> the delivery of the furniture necessary for his use, the judge may grant his petition.

**2892 [2858].** Parents are not required to give security for the usufruct of the property of their children; but this dispensation does not extend to the usufruct constituted by agreement or the testament of a third person for the benefit of the parents in the property of the children.

**2893 [2859].** The donor of property with the reservation of the usufruct is also dispensed from giving security, as are all persons who upon alienating a thing under an onerous title reserved the usufruct thereof for themselves. But this dispensation cannot extend either to the grantee or donee of the usufruct of property of which the vendor or donor has reserved the naked ownership.

**2894 [2860].** If during the existence of the usufruct a change of such a nature takes place in the personal condition of the usufructuary as to endanger the rights of the naked owner, as for example, if he becomes bankrupt, said

<sup>9</sup> *Caución juratoria*: a promise under oath (Alcubilla).

owner may demand security, if the usufructuary had been relieved from giving it. The same provision applies if the usufructuary commits an abuse in the use and enjoyment of the property which he has in usufruct, or when he gives ground for well-founded suspicions of malversation.

**2895 [2861].** If the immovable subject to the usufruct is expropriated for a cause of public utility, the usufructuary, even when solvent and relieved from giving security, cannot receive the indemnity due under the expropriation except subject to the charge of giving sufficient security therefor.

### CHAPTER III.

#### Of the Rights of the Usufructuary.

**2896 [2862].** The rights and obligations of a usufructuary are the same whether the usufruct springs from the law or whether it has been established in any other manner, without prejudice to the exceptions resulting from the law or the agreement.

**2897 [2863].** A usufructuary may use, collect the natural, industrial or civil fruits, and enjoy the objects upon which the usufruct is established, in the same manner as the owner himself.

**2898 [2864].** The natural fruits pendent at the time the usufruct begins belong to the usufructuary. Those pendent at the time of the termination of the usufruct belong to the owner, and if they have been sold, the owner has a right to the price also. Neither is obliged to make an allowance to the other for labor, seeds or other like expenses, without prejudice to the rights of third persons who have contributed their labor or money to the production of the fruits. Whatever is due on this account must be paid by the person who gathers the fruits.

**2899 [2865].** Civil fruits are acquired day by day, and belong to the usufructuary in proportion to the duration of the usufruct, even though he has not collected them.

**2900** [2866]. The products of quarries and mines of any kind which are being worked at the time of the beginning of the usufruct belong to the usufructuary, but he does not have the right to open new mines or quarries.

**2901** [2867]. The usufructuary is entitled to the enjoyment of the increase which things receive by accession, and also to the alluvion.

**2902** [2868]. The usufructuary does not have the right which the law vests in the owner of the land in any treasure discovered on the land of which he enjoys the usufruct.

**2903** [2869]. A universal usufructuary, or the usufructuary of an aliquot part of the property, is entitled to everything derived from the things given in usufruct, even though they be not fruits, in proportion to the part of the property which he enjoys.

**2904** [2870]. The usufructuary may lease the usufruct, or assign the exercise of his right under an onerous or gratuitous title; but he continues directly liable to the owner, in the same manner as a surety, even for the impairment of the property due to the fault or negligence of the person who substitutes him. The contracts entered into by him terminate with the usufruct.

**2905** [2871]. The usufructuary of things which are consumed by their first use may use and enjoy them freely, subject to the charge of returning a like amount of the same species or quality, or the amount of their valuation in the inventory.

**2906** [2872]. The usufructuary is entitled to make use of the things which are expended and deteriorate slowly by the use to which they are put, and is obliged to return them only upon the termination of the usufruct in the condition in which they are, unless they have deteriorated or been consumed through his fault.

**2907** [2873]. The usufructuary of wood land enjoys all the benefits which it produces according to its nature. If it consists of firewood or building timber, he may make the ordinary cuts which the owner would make, conforming to the customs of the country as to the mode and amount thereof and the seasons therefor. But he cannot cut down fruit

trees or trees used for adornment, or those which line roads or give shade to houses. The fruit trees which wither or fall through any cause belong to him, but he must replace them by others.

**2908 [2874].** The usufructuary may make improvements to the things subject to the usufruct, provided they do not alter either their substance or their general form. He may likewise reconstruct any building which has fallen into ruin on account of age or other causes; but he has no right to demand payment for the improvements; nevertheless, he may remove the useful or voluntary improvements, provided it is possible to remove them without damage to the thing subject to the usufruct, and he may also compensate them against the value of the damages for which he is obliged to pay.

**2909 [2875].** When the usufruct is established on credits or rents, the titles must be delivered and the debtors notified; but the usufructuary cannot recover them judicially without the concurrence of the naked owner.

**2910 [2876].** The usufructuary may exercise all actions the purpose of which is the enforcement of the rights inherent in the usufruct; and he may also, in order to assure the peaceful enjoyment of his right, institute the several possessory actions which the naked owner would be entitled to bring.

**2911 [2877].** The judgment obtained by the usufructuary, whether in a petitory or a possessory action, benefits the naked owner for the preservation of the rights which he is required to protect; but judgments rendered against the usufructuary cannot be set up against the naked owner.

## CHAPTER IV.

### Of the Obligations of the Usufructuary.

**2912 [2878].** The usufructuary must make use of the thing as the owner thereof would have used it, and use it for the purpose to which it was applied before the usufruct.

**2913** [2879]. The usufructuary cannot employ the objects subject to his right except in the uses proper to their nature. He must abstain from any act of operation tending momentarily to increase the emoluments of his right at the cost of a reduction in the future productive force of the things subject to the usufruct.

**2914** [2880]. In whatever manner the rights of the owner are disturbed by a third person, the usufructuary is obliged to notify the owner. Should he fail to do so, he shall be liable for all the damages sustained by the owner, as if they had been caused through his fault.

**2915** [2881]. The usufructuary must have the repairs necessary to the preservation of the thing made at his own expense. He is even compelled to make extraordinary repairs when they are rendered necessary owing to a failure to make repairs of preservation after the receipt of the things subject to the usufruct, or when they are required through his fault.

**2916** [2882]. The usufructuary cannot exempt himself from making the repairs necessary to the preservation of the thing by relinquishing his right of usufruct, except upon returning the fruits collected after the necessity to make the repairs arose, or their value.

**2917** [2883]. The obligation to provide for necessary repairs applies only to those which became necessary after the enjoyment of the things was entered upon. The usufructuary is not bound as to that which has fallen into ruin on account of age or a condition of affairs existing before the time he entered upon the enjoyment thereof.

**2918** [2884]. The repairs of preservation to be borne by the usufructuary are only the ordinary repairs for the preservation of the property, which do not exceed one-fourth of the net annual income, if the usufruct is onerous, or three-quarters thereof, if the usufruct is gratuitous.

**2919** [2885]. Extraordinary repairs and expenses are those necessary to re-establish or restore property which has fallen into ruin or decay by age or a fortuitous event.

**2920** [2886]. The usufructuary is not obliged to make any repairs of preservation, the cause of which is prior to the beginning of his right.

**2921** [2887]. The owner may, during the existence of the usufruct, compel the usufructuary to make the repairs which he is bound to make, without awaiting the termination of the usufruct.

**2922** [2888]. If the usufructuary makes repairs which he is not bound to make, he shall not be entitled to any indemnity.

**2923** [2889]. The usufructuary does not have the right to compel the naked owner to make any improvements to the property subject to the usufruct, nor any repairs, or expenditures whatsoever.

**2924** [2890]. If the naked owner makes repairs or expenditures to which the usufructuary is bound, he is entitled to recover them from the latter.

**2925** [2891]. The obligation of the usufructuary to make the repairs and the expenditures to be borne by him begins only on the day on which he enters upon the actual possession of the property subject to the usufruct. Before that date, the person who constitutes the usufruct, or the naked owner, is not obliged to make any repairs whatsoever, even when the property deteriorates. But if the delay in receiving the property is due to the usufructuary not having fulfilled the obligations which must first be fulfilled, and the naked owner makes the repairs which the usufructuary is bound to make after the delivery of the property, he has the right to demand of the latter whatever he has expended, and to hold the property until payment has been made.

**2926** [2892]. The usufructuary cannot demolish any construction, either in whole or in part, even though it be for the purpose of replacing it by a better one, or of using and enjoying the land in some other manner, or the materials of a building. If the usufruct includes houses, he cannot change their external form, nor their appurtenances, nor the interior arrangement of rooms. Nor can he change the destination of a house, even though he would thereby greatly increase the income which it produces.

**2927** [2893]. The usufructuary is liable if by his negligence he permits active servitudes to prescribe, or by his tolerance fails to acquire passive servitudes on immovables, or



fails to pay the debts inherent in the property subject to the usufruct.

**2928 [2894].** The usufructuary must pay all the public taxes considered as charges on the fruits, or as a debt of the enjoyment of the thing, as well as the direct contributions levied on the property subject to the usufruct.

**2929 [2895].** The usufructuary is obliged to contribute together with the naked owner to the payment of the charges laid on the property during the term of the usufruct.

**2930 [2896].** The usufructuary is obliged to contribute with the naked owner to the payment of the cost of the compulsory enclosure of the property, and to the establishment of the boundaries thereof, whenever it is done at the request of a neighbor, and also to the opening of streets and other similar expenses.

**2931 [2897].** In all cases in which the usufructuary is obliged to contribute with the naked owner to the payment of the charges on the property, it shall be in proportion to the value of the property subject to the usufruct, and to the value of that remaining to the heir of the owner.

**2932 [2898].** A person who acquires, under a gratuitous title, a usufruct in an aliquot part of property, is obliged to pay in proportion to his enjoyment, and without any right of recovery, the accrued allowances for support, incomes, salaries and interest to which the estate is subject.

**2933 [2899].** The usufructuary of particular property is not obliged to pay the interest on the debts, not even on those for which the thing is mortgaged. If in order to preserve his enjoyment he is forced to pay said debts, he may sue the debtor for both principal and interest, or the owner when he is not the debtor for the principal alone. The testator may direct that the property be delivered to the usufructuary free from the mortgages which encumber it.

**2934 [2900].** If the legacy of a usufruct comprises all the property of the testator, and the universal usufructuary desires to advance the sums necessary for the payment of the debts of the succession, the principal must be returned to him without any interest whatsoever, upon the termination

of the usufruct. But if the usufructuary does not desire to make the advance, the heir may elect either to pay the debt, in which case the usufructuary shall owe the interest accruing during the term of the usufruct, or cause a portion of the property subject to the usufruct to be sold.

**2935 [2901].** If the legacy of the usufruct comprises only an aliquot part of the property of the testator or the universality of a certain species of property, the usufructuary is obliged only to contribute with the heir to the payment of the debts of the succession in the proportion previously established.

**2936 [2902].** If the usufruct consists of cattle, the usufructuary is obliged to replace with the new-born cattle the number of animals dying naturally, or otherwise missing. If an entire herd or flock of animals dies without the fault of the usufructuary, the latter discharges his obligation by delivering to the owner the remains thereof saved. If the herd or flock dies in part without the fault of the usufructuary, he may elect between continuing the usufruct and replacing the animals missing, or terminating it and returning the animals which have not perished.

**2937 [2903].** If the usufruct is of animals individually considered, the usufructuary is entitled to make use thereof and take the products they give. He cannot hire them, unless such is the purpose of the animals. If they are lost or die, he is not obliged to make them good with the new-born animals, and the usufruct shall stand terminated as to them.

**2938 [2904].** When the usufruct is of credits, the usufructuary, after having collected them, whether represented by instruments or not, becomes bound, as to those collected, as in the usufruct of similar things.

**2939 [2905].** The usufructuary of credits cannot collect them by the voluntary delivery of property, nor make novation thereof, nor collect them before they are due, nor give an extension of time for their payment, nor compensate them, nor compromise with regard thereto, nor make a voluntary remission thereof.

**2940 [2906].** The usufructuary of credits is liable therefor if he fails to collect them through his negligence, or if he fails to exercise all judicial acts to enforce their payment.

**2941 [2907].** If the usufructuary does not collect the credits of which the usufruct consists, he shall be obliged only to return the instruments which represented them.

**2942 [2908].** The creditors of the usufructuary may demand that his usufruct be attached and that they be paid out of it, upon furnishing security in a sufficient amount for the preservation and return of the thing held in usufruct.

**2943 [2909].** If the usufruct has been constituted under a gratuitous title, the usufructuary must bear all or part of the costs of the actions relating, either to the enjoyment alone, or to the full ownership, according to the following distinctions:

If the sole object involved in the action is the enjoyment of the thing, the costs of all kinds, as well as the judgments rendered against the usufructuary, shall be borne by him exclusively.

If the action involves the full ownership, and interests both the usufructuary and the naked owner, and is won, the costs which are not reimbursable must be borne by the naked owner and by the usufructuary in the proportion hereinbefore established. A similar rule must be followed if the action is lost when the owner and the usufructuary were parties thereto. When one of them only was a party, the costs taxed against one or the other shall be borne by him exclusively.

When the naked ownership only was the subject thereof, they shall be borne by the owner exclusively.

## CHAPTER V.

### Of the Obligations and Rights of the Naked Owner.

**2944 [2910].** The naked owner is obliged to deliver to the usufructuary the object subject to the usufruct, with all its

accessories, in the condition in which it is, even though it cannot be applied to the use or enjoyment to which it is destined.

The young of the animals given in usufruct are not accessories to be delivered to the usufructuary, even when they are following their mothers, nor are the titles of their ownership.

**2945 [2911].** If the usufruct is of credits represented by instruments, the delivery of the latter must be made to the usufructuary as if he were an assignee, in order that he may collect them.

**2946 [2912].** The naked owner cannot, against the will of the usufructuary, change the form of the thing subject to the usufruct, nor build new constructions, nor remove from the estate stones, sand, etc., except for the purpose of making repairs thereto; nor destroy anything; nor remit active servitudes; nor impose passive servitudes, except subject to the clause that their exercise is not to begin until after the termination of the usufruct. But he may acquire active servitudes.

**2947 [2913].** Nor can he fell the large trees on an estate, even when they do not produce any fruit.

**2948 [2914].** The naked owner cannot do anything to the detriment of the enjoyment of the usufructuary, or in restriction of his right.

**2949 [2915].** When the usufruct is constituted under an onerous title, the naked owner must guarantee to the usufructuary the peaceful enjoyment of his right. This guaranty is of the same class as that given by a vendor to a purchaser. If the usufruct is under a gratuitous title and of fungible things, the usufructuary has no right of action whatsoever against the naked owner.

**2950 [2916].** The naked owner retains the exercise of all the rights of ownership compatible with his obligations. He may sell the object subject to the usufruct, donate it, encumber it with mortgages or servitudes to take effect after the termination of the usufruct, and exercise all the actions which belong to the owner in his capacity as such.

**2951** [2917]. The naked owner has the right to perform all acts necessary to the preservation of the thing. He may also reconstruct the buildings destroyed by any accident, even when by such works and during their construction the usufructuary suffers some discomfort or diminution in his enjoyment.

## CHAPTER VI.

### Of the Extinction of Usufruct and of its Effects.

**2952** [2918]. A usufruct is extinguished by the direct revocation of its constitution, by the revocation of the act upon suit by the creditors of the owner of the estate, by the resolution of the rights of the person who established the usufruct, and by the general causes whereby real rights are extinguished.

**2953** [2919]. A direct revocation lies when the usufructuary of the estate has given the usufruct in payment of a debt, which did not really exist.

**2954** [2920]. A usufruct is extinguished by the death of the usufructuary in any manner whatsoever; and one established in favor of a juristic person, by the termination of the legal existence of such person and by the fact of its having already been in existence twenty years.

**2955** [2921]. It is also extinguished by the expiration of the term for which it was constituted. Whatever be the term stipulated as the duration of the usufruct, it is extinguished nevertheless by the death of the usufructuary occurring before the expiration of said term. Even the time during which the usufructuary has not made use of the usufruct through ignorance, ouster, or any other cause, is also reckoned in the legal duration thereof.

**2956** [2922]. When the time of the expiration of the usufruct has arrived, and the usufructuary continues to enjoy the thing, he is bound to return the fruits collected, even when he is unaware of the expiration of the term of the

usufruct. If the usufruct consists of money, he owes interest from the time the usufruct terminates.

**2957** [2923]. A usufruct granted until a person attains a certain age, continues until such time, even when such third person died before the age stated, unless it clearly appears from the instrument creating the usufruct that the life of the third person was taken as an uncertain period for the duration of the usufruct, in which case the usufruct is extinguished by the death at whatever time it occurs.

**2958** [2924]. Usufruct is lost by non-user for a term of ten years, among persons present, and twenty, among absentees.

**2959** [2925]. When the things subject to the usufruct number more than one, the use and enjoyment which the usufructuary has had of some of them would not preserve his right in the others, unless they were all comprised in a juridical universality.

**2960** [2926]. A usufruct is likewise extinguished upon the fulfillment of the resolutive condition imposed in the instrument for the termination of the right.

**2961** [2927]. A usufructuary who continues to enjoy the thing after the performance of the condition, is entitled to the fruits until an action is brought for the resolution of his title and the delivery of the estate.

**2962** [2928]. A usufruct is extinguished by consolidation, that is to say, by the merger of the ownership and usufruct in the person of the usufructuary.

**2963** [2929]. The ownership of the thing given in usufruct becomes merged in the person of the naked owner by the death of the usufructuary, even when the condition has not been fulfilled, or even when the term to which the duration of the usufruct was subject has not expired; and by the extinction of the juristic person who acquired the usufruct, or by the expiration of the legal term of twenty years fixed for the usufruct of juristic persons.

**2964** [2930]. When the usufructuary is deprived in a suit of the naked ownership acquired by him, or when the naked owner is deprived of the usufruct he has acquired, by eviction, or by the resolution of his title of acquisition, the usufruct revives as originally constituted.

**2965 [2931].** A usufruct is extinguished when the usufructuary transfers his right, and the naked owner conveys his right to the same person.

**2966 [2932].** The form for the transfer of the right of usufruct in an immovable, or if the usufruct contains some immovable, shall be by public deed (*escritura publica*). It is void in any other form.

**2967 [2933].** The creditors of the usufructuary may demand the revocation of the transfer or the waiver of the right of the usufructuary, without being compelled to show that it was made with fraudulent intent.

**2968 [2934].** A usufruct is also extinguished by the total loss of the thing owing to a fortuitous event, when such thing is not fungible.

**2969 [2935].** When the loss of the thing owing to a fortuitous event is a total loss, the usufructuary does not retain any right to the accessories appurtenant to such thing, nor to what remains of such thing under a new and different form.

**2970 [2936].** If the usufructuary has taken out insurance on a building destroyed by fire, the usufruct continues in the indemnity paid him.

**2971 [2937].** A usufruct terminates by the total destruction of the thing. When the loss of the thing is partial, the usufruct continues not only as to that part thereof which is left in its original form, but also as to the remains and accessories.

**2972 [2938].** The partial extinction of a thing subject to a usufruct, or the deterioration thereof, even when due to the fault of the usufructuary, does not entitle the naked owner to sue for the extinction of the usufruct. The usufruct continues in the thing damaged, or in the part thereof remaining; and if the naked owner does not desire to make the necessary repairs and recover from the usufructuary whatever he has expended therein, he may sue him for damages.

**2973 [2939].** In the case of the preceding article, the naked owner may also, in order to prevent future destruction or deterioration, demand security to such end, and if the usufructuary does not give it, the proceedings shall conform to

the provisions regarding cases in which the usufructuary cannot receive the thing subject to the usufruct on account of insufficient security.

**2974** [2940]. A usufruct the subject of which is a legal universality, is not extinguished by the loss of one or more of the things comprised in such universality.

**2975** [2941]. A usufruct which is extinguished by the physical destruction of the thing does not revive when the thing is restored to its original state, excepting the usufruct of parents, or when the construction and new building forms part of a usufruct on property collectively considered.

**2976** [2942]. A usufruct is also extinguished by prescription.

**2977** [2943]. The termination of a usufruct owing to any cause other than the loss of the thing subject to the usufruct, or merger in the person of the usufructuary, shall have the direct and immediate effect of vesting in the naked owner the right of enjoyment of which he had been temporarily deprived.

**2978** [2944]. If the usufruct consist of money, or if there be money in the usufruct, the usufructuary must deliver it immediately after the termination of the usufruct, and if he fails to do so, he shall owe interest from the date on which his right terminated.

**2979** [2945]. A usufructuary unable to return in kind the objects which he takes in usufruct, or who cannot prove that they did not perish through his fault, must pay the value they had on the day he received them.

**2980** [2946]. The obligation of making restitution imposed upon the usufructuary or his heirs includes not only the objects which were subject to the usufruct from the beginning, but also the accessories they have received, and the improvements made by the usufructuary, without prejudice to the provisions relating to the right of the usufructuary to remove whatever can be taken without injury to the things which were subject to the usufruct.

**2981** [2947]. Upon the resolution of the right of the usufructuary in the property of the usufruct, the naked owner is not bound to any indemnity with respect to third persons,



whose rights are also resolved, nor is the usufructuary so bound, unless he bound himself expressly or acted in bad faith, even when such rights are the rights of lessors or tenants.

## TITLE XI. OF USE AND HABITATION.

**2982 [2948].** The right of use is a real right which consists in the power to make use of a thing belonging to another, independently of the possession of an estate, subject to the charge of preserving the substance thereof; or to take out of the fruits of an estate belonging to another whatever is necessary to meet the needs of the usuary<sup>10</sup> and his family.

If it relate to a house, and to the benefit of living therein, it is called in this Code the right of habitation.

**2983 [2949].** Use and habitation are constituted in the same manner as usufruct, with the exception that there is no legal use, or one established by the law.

**2984 [2950].** In order to obtain the enjoyment to which he is entitled, the usuary has a real right of action whereunder he may proceed not only against the owner who enjoys the estate, but also against third persons in possession of the estate, and he also has the possessory actions of a usufructuary.

**2985 [2951].** A right of use may be established in all kinds of things which are not fungible, the enjoyment of which may be of some benefit to the usuary. •

**2986 [2952].** Use and the right of habitation are governed by the instruments whereby they are constituted, and if there are no instruments, by the following provisions:

**2987 [2953].** Use and habitation are limited to the personal needs of the usuary or of the person having the right of habitation and his family, according to their social position.

The family comprises the wife and the legitimate and natural children, both those living at the time of the constitution thereof and those born thereafter, the number of necessary servants, and, in addition, the persons who at the time of the constitution of the use or habitation lived with the

<sup>10</sup> Tenant by use.

usuary or person having the right of habitation, and the persons to whom the latter owe support.

**2988 [2954].** The personal needs of the usuary shall be determined in relation to the various circumstances which tend to increase or reduce them, such as his habits, the state of his health, and the place where he lives, and it cannot be pleaded that he is not a person in need.

**2989 [2955].** In the needs of the usuary are not included those which relate solely to the industry or commerce in which he is engaged.

**2990 [2956].** If the right of use has been established in an estate, it extends both to what is immovable in its nature, as to all the accessories thereon connected with its operation. If there are buildings constructed for the service and operation of the estate, the usuary has the enjoyment thereof, whether as a dwelling while he is working it, or for the purpose of storing the crops.

**2991 [2957].** If it be recognized that the estate upon which a right of use has been established should not produce in an ordinary year an amount of fruits more than sufficient to provide for the needs of the usuary, or if the house is sufficient for him and his family only, the entire possession of the estate or house must be delivered to him, as if he were a usufructuary. He is bound to make the necessary repairs and pay the taxes, as if he were a usufructuary. If he takes a part of the fruits only, or occupies a part of the house only, he shall contribute in proportion to the part enjoyed by him,

**2992 [2958].** A person who has the use of the fruits of an estate has the right to use all the natural fruits it produces. But if the fruits are derived from the work of the owner or usufructuary, he is entitled to the use of the fruits only upon payment of all the costs of their production.

**2993 [2959].** A person who has the use of the fruits of a thing under a gratuitous title cannot assign or lease to another the right to collect them; but he may assign the use if he obtained it under an onerous title. In either case, the use of the fruits cannot be attached by the creditors of the usuary, when the fruits partake of the character of fruits for support.

**2994** [2960]. After the establishment of the right of use in an estate, the person who has the use has a right of preference over the owner, or the usufructuary of the estate, in the use of the natural fruits it produces, even though all the fruits are consumed by such use.

**2995** [2961]. If it has been established in animals, the usuary is entitled to use them in the works and services to which their species is adapted, and even for the necessities of his industry or commerce.

**2996** [2962]. A person who has the right of use of a herd or flock of cattle, may use the young, the milk, and the wool, as far as necessary for the consumption of himself and his family.

**2997** [2963]. A person who has the right of habitation cannot make use of the house for any purpose other than as a dwelling for himself and his family, or for the establishment of his industry or commerce, if not unsuitable therefor; but he cannot assign the use thereof nor rent it.

**2998** [2964]. When the use is established in movables, the usuary has the power to use them for his personal service and that of his family only, and cannot assign the use thereof to others, even though objects which the owner customarily rented are involved.

**2999** [2965]. A usuary without the right of habitation may rent the estate in which the use has been established.

**3000** [2966]. The obligations of the usuary with respect to the use to be made of the thing, are the same as those of a usufructuary in the thing subject to the usufruct with respect to its preservation and repair.

**3001** [2967]. A usuary who has the possession of the things subject to his right, and a person who enjoys a right of habitation with the possession of the entire house, must give security and make inventories in the same manner as a usufructuary; but neither the usuary nor the person who has the right of habitation are obliged to give security or make an inventory if the thing subject to the use or the house remains in the hands of the owner, and their right is limited to the right to demand out of the products of the thing whatever is

necessary for their personal necessities and those of their family, or when he resides only in that part of the house which has been assigned him as a habitation.

**3002 [2968].** The person who has the right of habitation of a house must contribute to the payment of the charges, the taxes, and the necessary repairs, in proportion to the part of the house he occupies.

**3003 [2969].** The provisions relating to the extinguishment of a usufruct apply equally to use and the right of habitation, with the modification that the creditors of the usuary cannot attack any waiver of his rights by him.

## TITLE XII. OF SERVITUDES.

**3004 [2970].** A servitude is a real right, perpetual or temporary, in immovable property belonging to another, by virtue of which use may be made thereof, or certain rights of disposition exercised, or the owner prevented from exercising some of his rights of property.

**3005 [2971].** A real servitude<sup>11</sup> is the right established in favor of the possessor of one estate in an estate belonging to another, for the benefit of the former.

**3006 [2972].** A personal servitude is one constituted for the benefit of a particular person, without regard to the possession of an immovable, and which terminates with such person.

**3007 [2973].** The dominant tenement or estate is that for the benefit of which real rights have been constituted.

**3008 [2974].** The servient tenement or estate is that upon which personal or real servitudes have been constituted.

**3009 [2975].** Servitudes are continuous or discontinuous. Continuous servitudes are those the use of which is or can be continuous, without an actual act of man, as a servitude of view. Servitudes do not lose their continuous character even when their exercise is interrupted for intervals of more or less length by reason of obstacles the removal of which

<sup>11</sup> Also called a predial servitude.

requires an act of man. Discontinuous servitudes are those which require an actual act of man in order to be exercised, such as a servitude of way.

**3010 [2976].** Servitudes are visible or apparent, or non-apparent. Apparent servitudes are those which are shown by external signs, such as a door, a window. Non-apparent servitudes are those which are not manifested by any sign, such as the prohibition to raise a building beyond a certain height.

## CHAPTER I.

### How Servitudes are Established and Acquired.

**3011 [2977].** Servitudes are established by onerous or gratuitous contracts which transfer property. The use which the owner of the estate to whom the servitude is granted makes of said right takes the place of tradition.

**3012 [2978].** They are also established by disposition of last will<sup>12</sup> and by the destination of the *pater familias*. The destination of the *pater familias* is the disposition which the owner of two or more estates has made for their respective use.

**3013 [2979].** The capacity to establish or acquire servitudes is governed by the provisions for the establishment or acquisition of the right of usufruct.

**3014 [2980].** The usufructuary may allow a servitude upon the immovable which he has in usufruct, but only for the term of the usufruct, and without prejudice to the rights of the owner.

**3015 [2981].** A servitude allowed by the naked owner does not prejudice the rights of the usufructuary; and the latter may prevent the exercise thereof during the term of the usufruct.

**3016 [2982].** A servitude allowed by the usufructuary upon the immovable subject to the usufruct becomes valid

<sup>12</sup> See Art. 981 [947].

without any restriction whatsoever if the naked ownership and the usufruct become subsequently merged in the usufructuary.

**3017 [2983].** A servitude allowed by the naked owner in favor of the immovable held in usufruct is valid, reserving the right of the usufructuary to make use thereof or not.

**3018 [2984].** A usufructuary, a usuary and the creditor in an antichresis contract may create servitudes in favor of the immovables of which they have possession, if they announce that they act for themselves as well as for the naked owner, if the latter accepts the stipulation. If the stipulation is not accepted by the naked owner, the servitude shall be merely a personal right of the persons who stipulated it, and it becomes extinguished together with their right in the thing.

**3019 [2985].** No servitude can be established as a charge upon an estate held in common by a number of persons, unless all the co-owners concur in the act of its constitution.

**3020 [2986].** Nevertheless, the servitude established by the co-owner of an estate becomes valid when, as a result of the partition or allotment, the estate encumbered therewith is included in whole or in part in the lot falling to the co-owner who constituted the servitude, and he shall not be permitted to set up the non-consent of the co-owners.

**3021 [2987].** If the co-owner who established the servitude sells his undivided portion to a third person, who becomes the owner of the other portions as the result of a public sale, said third person is obliged to suffer the exercise of the servitude in the same manner as the vendor.

**3022 [2988].** Servitudes may be established subject to a condition or term suspending the beginning of the exercise thereof, or limiting their duration.

**3023 [2989].** A servitude may be established only by the owner of the estate to be burdened, but a person who is not the owner of the estate may bind himself to establish the servitude when he becomes the owner.

**3024 [2990].** The mortgage which a creditor has on an immovable does not prevent the owner from burdening it with a servitude, but the creditor may make use of the rights

granted against a debtor who diminishes the security for the debt.

**3025 [2991].** The servitude imposed on an estate does not deprive the owner thereof of the right to establish other servitudes on the same estate, provided they do not impair previous servitudes.

**3026 [2992].** As to their form, the establishment of servitudes is governed by the provisions relating to sales, when made under an onerous title, and by the provisions relating to donations and testaments, when established under a gratuitous title.

**3027 [2993].** The establishment of a servitude created by an instrument may be proved by the original act evidencing its constitution, or by an act executed by the owner of the servient tenement at the time, without the necessity of the acceptance of the act of acknowledgment by the owner of the dominant tenement, or by a final judgment.

**3028 [2994].** When the owner of two tenements has himself subjected one with respect to the other to continuous and apparent servitudes, and later dismembers them without changing the state of the places, and without the contract containing any agreement with respect to the servitude, it shall be considered created as if constituted by an instrument.

**3029 [2995].** If the owner of two estates between which there exists an apparent indication of a servitude on one in favor of the other, disposes of one of them, and the contract contains no stipulation regarding the servitude, the latter continues to exist actively or passively in favor of the estate alienated, or upon the estate alienated.

**3030 [2996].** The effect of the destination<sup>13</sup> given by the owner to the two tenements is independent of the cause which gave rise to the separation, whether the result of a partition or a voluntary or forced alienation, or to the loss by prescription of the ownership of one of them.

**3031 [2997].** Discontinuous servitudes, even though apparent, cannot be established by the mere destination which the owner thereof has given to the immovables.

<sup>13</sup> See Art. 3012.

**3032** [2998]. Servitudes may be established upon an immovable as a whole, or upon a material portion thereof, as to its surface, its depth, or its height.

**3033** [2999]. The existence of mortgages on an estate does not bar the constitution of servitudes upon an immovable; but a servitude thus constituted cannot be set up against the mortgage creditors prior to its establishment, and they may in a necessary case demand that the immovable be sold as unencumbered by any servitude.

**3034** [3000]. Servitudes may be constituted whatever be the restriction of the liberty of other real rights in the immovables, even though the benefit be one of mere pleasure only; but if no benefit accrues therefrom to that in favor of which it is established, it is void.

**3035** [3001]. A servitude may be constituted for the benefit of a future immovable or one which is not to be acquired until later, or which consists of a future benefit, such as that of carrying water which has not yet been brought to the surface, but which it is sought to discover.

**3036** [3002]. A servitude cannot be established on things which are out of commerce.<sup>14</sup>

**3037** [3003]. If a real benefit accrues to the estate by the act constituting the servitude, the presumption is that the right granted is a real servitude; but on the contrary, if the grant of the right appears to give only personal pleasure or comfort to the individual, it is considered as established in favor of the person, and is real only when it contains an express declaration that it is such.

**3038** [3004]. When the right granted is merely a personal power to an individual, it is extinguished by the death of said individual, and lasts only twenty years if the beneficiary is a juristic person. Any stipulation to the contrary is prohibited.

**3039** [3005]. The charge of real servitudes must, presently or eventually, assure a real advantage to the dominant tenement, and the situation of the estates must permit the exercise thereof, although it is not indispensable that they be adjacent.

<sup>14</sup> See note to Art. 878 [844].



**3040 [3006].** Real servitudes considered actively and passively are inherent in the dominant tenement and in the servient tenement, and pass with them to whomsoever the tenements are conveyed; and they cannot be separated from the tenement, nor form the object of an agreement, nor be subjected to any charge whatsoever.

**3041 [3007].** Real servitudes are indivisible both as charges and as rights, and cannot be acquired or lost by aliquot ideal parts, and the owners of the different parts may exercise them, but without rendering more burdensome the condition of the servient tenement.

**3042 [3008].** The indivisibility of servitudes does not bar the limitation of their exercise as to the place, time and manner thereof.

**3043 [3009].** Real servitudes are considered to have been established perpetually in the absence of an agreement limiting them to a certain time.

**3044 [3010].** Servitudes which consist of an obligation to do something, even though temporary and for the benefit of an immovable, cannot be established. A servitude so constituted is valid only as a simple obligation for the debtor and his heirs, without affecting the estates nor passing with them to the possessors of the immovables.

**3045 [3011].** Any doubt as to the existence of a servitude, whether personal or real, as to its extent or the manner of using it, is interpreted in favor of the owner of the servient tenement.

**3046 [3012].** Persons able to establish servitudes on their lands, may acquire servitudes; but persons who do not enjoy their rights, such as minors, although unable to establish servitudes, may acquire them.

**3047 [3013].** A person who assumes the character of owner and enjoys an estate as such, whether in good or bad faith, and one who acts in the name of the owner of an immovable, even though he have no mandate, may acquire real servitudes, and a person who has granted them cannot revoke them.

**3048 [3014].** In all the cases of the two preceding articles,

if the owners whose affairs have been transacted find the establishment of the servitude burdensome, they may waive its use by renouncing the servitude.

**3049** [3015]. One of the co-owners of an undivided estate may contract a servitude for the benefit of the estate held in common; but the other co-owners may refuse to avail themselves thereof. He who has granted it cannot evade the obligation contracted.

**3050** [3016]. A usufructuary may acquire a servitude in favor of the estate of which he has the usufruct, if he declares that he acts for the owner, or if he stipulates that the servitude is established in favor of all persons who succeed him in the possession of the estate; but if he assumes in the act whereby the servitude is acquired merely the quality of a usufructuary, without stating at the same time that he contracts for all his successors in the possession of the estate, the right is extinguished with the usufruct, and the owner cannot claim it upon the termination of the usufruct.

**3051** [3017]. Continuous and apparent servitudes are acquired by instrument, or by possession for thirty years. Non-apparent continuous servitudes and apparent or non-apparent discontinuous servitudes cannot be established other than by instrument. Possession, even though immemorial, is not sufficient for their establishment.

## CHAPTER II.

### Of the Rights of the Owner of the Dominant Tenement.

**3052** [3018]. By the establishment of a servitude, the owner of the dominant tenement is understood to be granted the power to exercise the accessory servitudes which are indispensable to the use of the principal servitude; but the grant of a servitude does not virtually carry with it the grant of other servitudes, merely for the purpose of facilitating the exercise thereof, if not indispensable to its use.

**3053** [3019]. The extent of servitudes established by will of the owner are governed by the terms of the instrument creating them, and in the absence thereof by the following provisions.

**3054** [3020]. The owner of the dominant tenement may exercise his right to the full extent which servitudes of a character similar to that established for the benefit of his estate support under local usages.

**3055** [3021]. If the mode of making use of a servitude is uncertain, as, for example, when the place necessary for the exercise of a right of way is not determined in the instrument, the debtor of the servitude shall fix the place where he wishes it to be exercised.

**3056** [3022]. The owner of the dominant tenement has the right to construct on the servient tenement all the works necessary to the use and maintenance of the servitude; but the cost thereof shall be borne by him, even if the necessity for the repairs has been caused by a defect inherent in the nature of the servient tenement. This provision includes a servitude of suffering the burden of a wall or building, as well as all other servitudes.

**3057** [3023]. It may nevertheless be stipulated that the cost of the maintenance of the servitude shall be borne by the servient tenement. In such case the owner of the servient wall may relieve himself of the expense by abandoning the tenement to the owner of the dominant building.

**3058** [3024]. An existing servitude cannot be separated in any form from the dominant tenement, for transfer upon another tenement belonging to the owner of the dominant tenement or a third person.

**3059** [3025]. The exercise of a servitude cannot exceed the necessities of the dominant tenement to the extent of their existence when the servitude was constituted.

**3060** [3026]. When the servitude is constituted for a specified use, it cannot be exercised for other uses.

**3061** [3027]. If the servitude has been acquired by possession throughout the time which the law fixes for prescription, it may be exercised only within the limits which the possession has had.

**3062** [3028]. If the dominant tenement passes from one owner to a number of owners, in common or separately, each of said owners shall have the right to make use of the servitude, whether divisible or indivisible, with the charge of making use thereof in such manner as not to render more burdensome the condition of the servient tenement. Thus, if a right of way is involved, all of the co-owners must exercise their right at the same place. On the other hand, the division of the servient tenement does not modify the rights and duties of the two tenements.

**3063** [3029]. A servitude is considered divisible when it consists of acts which are susceptible of division, such as the taking of stones, earth, etc., and in such case each of the owners of the dominant tenement may exercise it in whole or in part, provided he does not exceed the amount assigned to the needs of the dominant tenement.

**3064** [3030]. When the servitude is indivisible, each of the owners of the dominant estate may exercise it without restriction, if the others do not object, even though it increase the burden of the servient tenement, if on account of the nature of the servitude the increase in the burden is inevitable. The possessor of the servient tenement is not entitled to any indemnity whatsoever on account of the increased burden.

**3065** [3031]. If a personal servitude becomes separately vested in two or more dominant owners, and is divisible, each of the owners shall have the right to exercise it only to the extent it belonged to him. If indivisible, each of them shall have the right to exercise it, without the others being permitted to object.

**3066** [3032]. If the dominant tenement becomes the property of two or more dominant owners separately, and the servitude benefits one part of the estate only, the right to exercise it is vested exclusively in the possessor of such part, without the possessors of the other parts having thereafter any right whatsoever.

**3067** [3033]. If the servitude is divisible and benefits all the parts of the dominant tenement, or a section which has become the property of two or more dominant owners sep-

arately, each of them shall have a right to exercise it only to the extent of his previous right, and in case of doubt each of the possessors shall have the right to exercise it to an amount in proportion to his interest in the dominant tenement. If indivisible, the provisions applicable are those prescribed as to dominant estates belonging to a number of persons, there being then as many different servitudes as there are possessors of the dominant tenement; but the right to exercise it is not vested in one to the exclusion of the others, the imposition of a heavier burden upon the servient tenement being avoided if possible.

**3068 [3034].** The owners of dominant estates may have recourse to real actions and defenses, extrajudicial possessory remedies, and possessory actions and defenses.

**3069 [3035].** Whether the servitude be divisible or indivisible, each of the dominant owners in common may exercise the actions set forth in the preceding article, and the judgment rendered benefits the other co-owners.

### CHAPTER III.

#### Of the Obligations and Rights of the Owner of the Servient Tenement.

**3070 [3036].** The owner of the servient tenement, if the servitude be negative, must abstain from acts of disposition or enjoyment which might prevent the use thereof; and if affirmative, he must suffer on the part of the owner of the dominant tenement all that the servitude authorizes him to do.

**3071 [3037].** The owner of the servient tenement cannot in any manner whatsoever impair the use of a constituted servitude; nevertheless, if the place originally assigned by the owner thereof becomes very inconvenient to him, or prevents him from making important repairs thereto, he may offer some other convenient place to the owner of the dominant tenement, and the latter cannot refuse it.

**3072 [3038].** The owner of the servient tenement who has caused works to be constructed contrary to the exercise of the servitude, is obliged to restore things to their former state, at his own expense, and in a proper case may be adjudged to pay damages. If the servient tenement has passed into the hands of a particular successor, the latter is obliged to suffer the re-establishment of the former state of things; but he cannot be adjudged to do so at his own expense, without prejudice to the right of the owner of the dominant tenement to recover the expenses and damages from the person who constructed the works which are an obstacle to the exercise of the servitude.

**3073 [3039].** Upon complying with the obligation of tolerating or abstaining derived from the servitude, the owner of the servient tenement preserves the exercise of all the powers inherent in ownership. Hence he may make constructions upon the ground which is subject to a servitude of way, under the condition that he leave the height, width, light and air necessary to its exercise.

**3074 [3040].** The owner of the servient tenement does not lose the right to devote the estate to the same uses which form the object of the servitude. Hence, a person whose estate is burdened with a servitude of way, or whose well or spring situated on his estate is burdened with a servitude of drawing water therefrom, preserves the power to pass over it himself and draw the water which he requires, upon contributing in proportion to his enjoyment to the cost of the repairs which this community of use entails.

**3075 [3041].** He may require that the exercise of the servitude be so arranged as to be least prejudicial to his interests, without depriving the owner of the dominant tenement of the benefits to which he is entitled.

**3076 [3042].** If the possessor of the servient estate has agreed to construct works or incur expenses for the exercise or maintenance of the servitude, such obligation affects him and his heirs only, and not the person who is the possessor of the servient tenement.

**3077 [3043].** If the servient tenement becomes the property of two or more separate possessors, and the servitude is exercised over a part thereof only, the other parts are released therefrom.

**3078 [3044].** In case of doubt as to the restrictions imposed by the servitudes upon the servient tenement, it must be decided in favor of the freedom of the estate.

## CHAPTER IV.

### Of the Extinction of Servitudes.

**3079 [3045].** Servitudes are extinguished by the resolution of the right of the person who constituted them, whether by rescission or by the annulment of the title on account of a defect inherent in the act.

**3080 [3046].** They are extinguished also by the expiration of the time fixed as the term of the servitude, and by the fulfillment of the resolutive condition to which such right is subject.

**3081 [3047].** Servitudes are extinguished by the express or implied waiver of the owner of the estate to which it is due, or of the person in whose favor the right has been constituted. An express waiver must be made in the form prescribed for the alienation of immovables. It need not be accepted in order to produce its effects between the parties. An implied waiver takes place when the possessor of the servient tenement has constructed permanent works, with written authorization from the dominant owner, which interfere with the exercise of the servitude.

**3082 [3048].** The tolerance of works in conflict with the exercise of the servitude does not imply a waiver of the right, even though constructed in sight of the dominant owner, unless they continue the time necessary for prescription.

**3083 [3049].** Nor is the construction of works in conflict with the exercise of a servitude by the dominant owner upon his estate equivalent to an implied waiver of the right, even

when they are permanent, unless they continue the time necessary for prescription.

**3084** [3050]. A servitude terminates when it answers no purpose of utility to the dominant tenement. A change which does not deprive a servitude of all utility would be insufficient to terminate it.

**3085** [3051]. A servitude is also extinguished when its exercise becomes absolutely impossible by reason of the destruction of either of the estates, or by reason of a change occurring in the dominant or servient tenement, whether due to an act of nature or the lawful act of a third person.

**3086** [3052]. A servitude does not terminate when the impossibility to exercise it is due to changes made by the owner of the dominant tenement, or by the owner of the servient tenement, or by a third person, exceeding the limits of his right.

**3087** [3053]. A servitude revives when the things which have been changed are restored to their former condition and use can be made thereof, if the time for prescription has not passed without the dominant owner having restored the things destroyed or changed by him, or if, having a right to bring an action to make the necessary repairs, he did not do so, or did so after the expiration of the period of prescription.

**3088** [3054]. The provisions of the preceding article apply to the active or passive servitudes inherent in houses, walls belonging to one person only or party walls, and to constructions in general. If they are demolished or destroyed, and then rebuilt, the servitude continues in the new house, in the new wall, or in the new construction, if the time for prescription has not run.

**3089** [3055]. Servitudes are extinguished by the merger in the same person, whether the owners of the estates or a third person, of the dominant tenement and of the servient tenement, whatever be the cause thereof, or when in servitudes in favor of a person, such person has become the owner of the servient tenement.

**3090** [3056]. If the acquisition of the estate which brought about the merger of the two estates in one person is annulled,



rescinded or resolved with retroactive effect, the servitude is considered never to have been extinguished. The same thing occurs if the merger of the two estates is terminated by a legal eviction.

**3091** [3057]. When a servitude is extinguished by the definite merger of the two qualities of dominant owner and possessor of the servient tenement, it does not revive by the fact of the dominant tenement or the servient tenement ceasing to belong to the same possessor, unless there is an express declaration to that effect in the instrument whereby one of said immovables is conveyed, or unless, in the absence of a declaration to the contrary, there are apparent signs of a servitude between them at the time of the conveyance.

**3092** [3058]. There is no merger of the two qualities of dominant owner and possessor of the servient tenement when the possessor of one of the immovables becomes merely a co-owner of the other immovable, or when the conjugal partnership acquires an estate which is dominant or servient to another estate which belongs to one of the spouses, or to one of the partners, unless upon the dissolution of the marriage, or the dissolution of the partnership, both estates become the property of the same person.

**3093** [3059]. Servitudes are extinguished by non-user for ten years as to persons present, or twenty as to persons absent, even when caused by a fortuitous event or *force majeure*. The time of prescription on account of non-user continues to run for discontinuous servitudes from the day they ceased to be used, and for continuous servitudes, from the day an act in conflict with the exercise of the servitude was performed.

**3094** [3060]. In order to preserve the servitude and prevent prescription, it is sufficient that the representatives of the owner in the rights of his estate, or strangers, have made use of the servitude in connection with the estate. Hence, a servitude is preserved by the use thereof by a possessor in bad faith who enjoys the estate to which it is due.

**3095** [3061]. If the estate in favor of which the servitude is established belongs to a number of persons *pro indiviso*, the

enjoyment by one of them prevents prescription as to the others.

**3096** [3062]. If among the owners there is any against whom the time of prescription could not run, such owner will have preserved the right of the others.

**3097** [3063]. The modification of the servitude, that is to say, of the mode of using it, prescribes in the same manner as the servitude itself.

**3098** [3064]. An incomplete or restricted use of a servitude during the time fixed for prescription carries with it a partial extinction thereof, and reduces it to the limits within which it has been used.

**3099** [3065]. When the owner of the dominant tenement has used the servitude according to his title, in the measure of his needs or conveniences, it must be held that he has preserved it intact, even though he has not done all that he was authorized to do. Hence, a person who is granted the right under his title to pass on foot, on horseback, or in a wagon, preserves his right intact if he has limited himself to passing on foot.

**3100** [3066]. When the partial exercise of the servitude is the result of a change in the material state of the places, rendering a full use thereof impossible, or to opposition on the part of the owner of the servient tenement, the servitude is reduced to the limits within which it has been exercised during the time fixed for prescription.

**3101** [3067]. The exercise of a discontinuous servitude at a place other than that fixed for the purpose carries with it the loss, after ten years, of the original designation; but it does not carry with it the extinction of the servitude itself, unless the designation is to be considered as inherent in the constitution of the servitude. With the exception of this case, the owner of the servient tenement must suffer the exercise of the servitude at the place where it has been exercised, if he does not permit the owner of the dominant tenement to return to the place originally designated.

**TITLE XIII. OF SERVITUDES IN PARTICULAR.****CHAPTER I.****Of Rights of Way.**

**3102** [3068]. The owner, the usufructuary, or the usuary of an estate lacking any communication with the public road on account of the interposition of other estates, has the right to impose upon such estates a servitude of way upon paying the value of the land necessary therefor and indemnity for any other damages.

**3103** [3069]. Estates which have no outlet to the public road, and also those which have an outlet which is insufficient for their operation, are considered estates enclosed by the neighboring estates.

**3104** [3070]. An estate is not considered enclosed by the neighboring estates when a part of such estate containing no buildings is separated from the public road by constructions which form part thereof.

**3105** [3071]. A servitude of way is imposed upon all the estates adjoining the estate enclosed, whether they be dwellings, parks, gardens, etc.

**3106** [3072]. The owner of a tract of land is not permitted to create in his favor a right of way more extensive than that to which he was entitled under the original character of his estate, by the construction of buildings thereon.

**3107** [3073]. If part of an estate is sold or exchanged, or if it is allotted to any person having an undivided interest therein, and as a consequence thereof such part becomes separated from the public road, it is understood that a servitude of way has been established in its favor, without any indemnity whatsoever.

**3108** [3074]. The right of way must be established over the adjoining estates where the distance is the shortest to the public road. The judges may, nevertheless, depart from this rule, either in the interest of the adjoining estates, or in the

interest of the estate enclosed, if the location of the places or special circumstances so require.

**3109** [3075]. The right of way must be granted to the owner of the enclosed estate, for himself and his workmen, as well as for his animals, vehicles, agricultural implements, and everything necessary for the use and working of his estate.

**3110** [3076]. If a right of way having been granted, it becomes no longer indispensable to the enclosed estate, owing to a road having been built, or the union of the tenement with an estate communicating with the public road, the owner of the servient tenement may demand that he be relieved of the burden of the servitude upon returning the amount paid him for the value of the land when it was established. But if the enclosure of the estate is the result of a partition or partial conveyance, the servitude of way constituted by the provisions of this Chapter shall continue to subsist, notwithstanding the termination of the enclosed condition.

**3111** [3077]. A person who finds it absolutely necessary in building or repairing his house to have his laborers pass over the property of his neighbor, may compel the latter to suffer it, conditioned upon his indemnifying him for any damage which he may sustain.

**3112** [3078]. A servitude of way not constituted in favor of an enclosed estate, is, in case of doubt, considered personal. It is discontinuous and non-apparent when it shows no permanent external sign of passage.

**3113** [3079]. If at the time of the constitution of the servitude of way the manner in which it is to be used is not expressed, the right of way comprises the right to pass in any manner necessary, according to the nature and destination of the immovable to which the passage leads. If the time when the servitude is to be exercised has not been determined, passage shall be permitted in the daytime only, if the place is enclosed, and at any hour, if not enclosed. When the manner of using the right of way has been determined, the dominant owner cannot, for any cause or necessity whatsoever, enlarge

it by using it in any other manner, or by causing persons or animals to pass which the servitude does not comprise.

**3114 [3080].** There is an implied waiver of the right of way if the dominant owner permits the possessor of the servient estate to close the right of way, without in some manner reserving his right.

**3115 [3081].** A servitude of way is not extinguished even when the passage becomes unnecessary to the immovable to which it leads, or even when the dominant owner has acquired other contiguous land over which he can pass.

## CHAPTER II.

### Of the Servitude of Aqueduct.

**3116 [3082].** Every estate is subject to the servitude of aqueduct in favor of another estate which lacks the water necessary for the cultivation of sown, planted or pasture land, or in favor of a town which requires it for the domestic service of its inhabitants, or in favor of an industrial establishment, subject to an equitable indemnity.

This servitude consists of the real right of causing the water to enter upon one's own estate, over estates belonging to others.

**3117 [3083].** A servitude of aqueduct, in case of doubt, is considered as having been constituted as a real servitude. It is always continuous and apparent, and is applied to waters of public use, as well as streams under a grant from a competent authority; to water brought to the surface of the ground by artificial means, as well as to that which rises naturally; to water in receptacles or canals belonging to private individuals who have granted the right to dispose thereof.

**3118 [3084].** Houses, corrals, courts, and gardens appurtenant thereto and orchards having an area of less than ten thousand square meters are not subject to the servitude of aqueduct.

**3119 [3085].** The owner of the servient tenement is entitled to payment for the use of the land occupied by the aqueduct

and for a space on each side thereof not less than one meter wide along its entire length. This width may be increased by agreement of the parties, or by order of the judge, when the circumstances so require. He shall be also paid an additional ten per centum of the total value of the land, which land shall always belong to the owner of the servient tenement.

**3120 [3086].** The owner of the servient tenement is obliged to permit the entry of laborers to clean and repair the aqueduct, as well as that of an inspector or caretaker; but only from time to time, or as frequently as the judge may determine, in view of the attendant circumstances.

**3121 [3087].** A person who has an aqueduct upon his own estate for his own benefit, may oppose the construction of another thereon and offer passage through his own for the water which another person desires to use, provided this does not cause the person who desires to construct a new aqueduct any considerable loss; and he shall be paid the value of the ground occupied by the old aqueduct, including the lateral space; and he shall be indemnified for the entire value of the work throughout the length used by the person interested. If it becomes necessary to widen the aqueduct, he shall do so at his own expense, paying for the value of the land and the lateral space, but without the surcharge of ten per centum.

**3122 [3088].** If the person who has an aqueduct on the estate of another desires to admit a larger volume of water thereto, he may do so upon indemnifying the servient tenement for all damage it thereby sustains, and if new works are necessary for the purpose, the provisions relating to the construction of aqueducts shall be observed.

**3123 [3089].** The dominant owner has the right to raise or lower the level of the servient tenement in order to conduct the water of the aqueduct to its destination, and may also take the earth or sand which he requires.

**3124 [3090].** The dominant owner cannot convert an underground aqueduct into an uncovered one, nor an uncovered aqueduct into an underground one, depriving the pos-

essor of the servient tenement of the ability to draw water therefrom or to water his animals thereat.

**3125 [3091].** The possessor of the servient tenement may use the water running through an uncovered aqueduct and take it to his estate, if he cause no damage thereby to the dominant tenement.

**3126 [3092].** He cannot cover an open aqueduct in order to use the land, nor plant trees alongside of the aqueduct, without the consent of the owner of the dominant tenement.

### CHAPTER III.

#### Of the Servitude of Receiving Water from the Estates of Others.

**3127 [3093].** The passive servitude of receiving water from another estate is considered a real servitude, in the absence of an agreement to the contrary. It is always continuous and apparent, if there is some permanent external sign of the outlet of the water upon the servient tenement.

**3128 [3094].** When a servitude to receive the water from neighboring roofs has been constituted, the owner of the estate cannot cause water from another estate to escape or fall, even when it joins the water of the first estate; or other water which at the time of the constitution of the servitude had a different outlet or fell elsewhere, nor can he cause used water instead of rain water to escape or fall.

**3129 [3095].** If any important point has been omitted in the instrument constituting the servitude to receive water, recourse shall be had to judicial arbitration and experts shall be heard, but upon the following basis:

1. When it is provided in the instrument that the servitude is of drippings or to receive water from roofs, it includes only rain water and not used water.

2. When it is stated therein that it is to receive the water of a house, all the used water of the house, including the

kitchen water, is understood to be comprised therein; but not filthy or polluted water.

3. When it is stated that it is for the purpose of receiving the water from a certain industrial establishment, it comprises only the water used in the work of said establishment and not other used water.

4. When it is stated in the instrument generally that it applies to all the water from a house without exception, used and polluted water is included.

**3130 [3096].** In a passive servitude of receiving water from roofs, it is incumbent upon the possessor of the dominant roof to maintain and clean the pipes or gutters. When there are two or more possessors of the dominant roof, or when the gutters or houses throw off water from two or more houses, each of them shall contribute to the upkeep and cleaning of the pipes or drains through which the water runs.

**3131 [3097].** The owners of the lower tenements are obliged to receive not only the natural waters but also the artificial waters flowing from the upper lands to which they have been taken or from which they have been drawn to meet the needs of irrigation or manufacturing establishments, without prejudice to the indemnity due the lower estates, taking into consideration the benefits they may derive from such waters.

**3132 [3098].** The owner of the upper land who causes artificial waters to descend to the lower lands, is obliged to make the expenditures necessary on the lower tenements in order to reduce in so far as possible the damage which the stream of water causes them.

**3133 [3099].** Buildings, yards, gardens, and orchards having an area not in excess of ten thousand square meters, are free from this servitude.

**3134 [3100].** Any owner desiring to drain his land of water which damages him, either to prevent it being flooded or to discontinue its irrigation, or for agricultural purposes, or to take out stones, clays or minerals, may, after paying a just indemnity, conduct the water through underground or



uncovered canals over the properties located between his estate and a stream of water, or any other public way.

**3135** [3101]. The passage of water cannot be demanded except under the condition that it will be given a sufficient head to prevent it from becoming stagnant.

**3136** [3102]. Buildings, yards, gardens, and orchards, the area of which does not exceed ten thousand square meters, are excepted from this servitude.

**3137** [3103]. The owners of the estates traversed by the water, and the persons residing on said estates, have the power to use the works constructed as an outlet for the water on their own estates, subject to the following conditions:

1. To return the indemnity they have received, and to contribute to the indemnities paid more remote owners.

2. To bear a proportionate part of the cost of the works from which they benefit.

3. To pay the cost of the changes which the exercise of this power may render necessary.

4. To contribute to the maintenance of the works which become common.

## CHAPTER IV.

### Of the Servitude of Drawing Water.

**3138** [3104]. The servitude of drawing water from a spring, cistern, or well upon the estate of another, is in case of doubt considered personal. It is always discontinuous and non-apparent, and presupposes a right of way to draw the water.

**3139** [3105]. The dominant owner has the power to clean the cistern, spring or well from which the water is drawn, whenever he deems it necessary.

**3140** [3106]. The possessor of the servient cistern, spring or well, may also draw water from the same place, and even grant a similar right to others, if not expressly prohibited from doing so in the instrument constituting the servitude, pro-

vided it does not affect the purity nor diminish the supply of water to such an extent as to render it insufficient for the first dominant owner, and does not injure him in any other manner.

**3141** [3107]. If a statement of the time and the manner of using the servitude has been omitted in the instrument constituting it, it is understood that the water can be drawn only in the daytime and not at night, except under extraordinary circumstances; and even in the daytime it cannot be drawn at inconvenient hours.

#### TITLE XIV. OF MORTGAGE.

**3142** [3108]. A mortgage is a real right created for the security of a credit in money, upon immovable property, which continues in the possession of the debtor.

**3143** [3109]. A mortgage can be constituted on immovable property only, especially and expressly determined, for a sum of money, also certain and determined. If the credit is conditional or not specific in amount, or if the obligation is an eventual one, or if it consists in doing or not doing something, or if its object is prestations<sup>15</sup> in kind, a declaration of the estimated value in the mortgage deed will suffice.

**3144** [3110]. The mortgage of an immovable extends to all its appurtenances, as long as they are joined to the principal; to all subsequent improvements to the immovable, whether natural, accidental, or artificial improvements, even when the act of a third person; to the constructions made on vacant land; to the benefits accruing from the extinguishment of the charges or servitudes to which the immovable was subject; to the rental or lease price owed by the lessees; and to the amount of the indemnity paid or due from the insurers of the immovable. But the acquisition by the owner, of adjoining immovables for the purpose of attaching them to the immovable mortgaged, is not subject to the mortgage.

<sup>15</sup> See note on page 93.

**3145** [3111]. The costs and expenses, as well as any damages which the mortgagor is adjudged to pay on account of a failure to perform an obligation, are included, as accessory to the principal credit, in the mortgage security constituted for the protection of said credit.

**3146** [3112]. A mortgage is indivisible; each of the things mortgaged for a debt, and each part thereof is bound to the payment of the entire debt and of each part thereof.

**3147** [3113]. A creditor whose mortgage extends to a number of immovables has the right to select any of said immovables in order to recover payment therefrom of his entire credit, even though other mortgages have been constituted thereon subsequently.

**3148** [3114]. A creditor whose mortgage is constituted on two or more immovables may, even though he find them owned by different third possessors, proceed against all of them simultaneously, or cause one of them only to be levied on under execution.

**3149** [3115]. There is no other mortgage than a conventional mortgage constituted by the debtor of an obligation in the form prescribed in this Title.

**3150** [3116]. A mortgage may be created subject to any condition, and from a day certain, or to a day certain, or for a conditional obligation. If granted subject to a suspensive condition or from a day certain, it is not valid until after the condition has been performed, or the day has arrived; but after the fulfillment of the condition or the arrival of the day, its date is that on which it was recorded in the office of the registrar of mortgages. If the mortgage is for a conditional obligation, and the condition is fulfilled, it has a retroactive effect to the day of the mortgage agreement.

**3151** [3117]. A person who has conveyed an immovable subject to a resolutive condition, or subject to an avoidance clause, whether express or implied, cannot mortgage it before the fulfillment of the resolutive condition.

## CHAPTER I.

**Of Persons who can Constitute Mortgages, and the Property on which they may be Constituted.**

**3152** [3118]. Persons who cannot validly bind themselves, cannot mortgage their property; but a mortgage constituted by an incapacitated person may be ratified or confirmed with retroactive effect, upon the termination of the incapacity.

**3153** [3119]. In order for a mortgage to be constituted it is necessary that the mortgagor be the owner of the immovable and that he have the capacity to convey immovable property.

**3154** [3120]. The real rights of usufruct, servitude of use and habitation, and mortgage rights, cannot be mortgaged.

**3155** [3121]. It is not necessary that the mortgage be constituted by the person who has contracted the principal obligation, and it may be given by a third person without binding himself personally.

**3156** [3122]. If the obligation for which a third person has given a mortgage is annulled solely on account of a purely personal defense, such as minority, the mortgage given by the third person is valid and produces its full and entire effect.

**3157** [3123]. Each one of the co-owners of an immovable may mortgage his undivided interest in an immovable held in common, or a materially determined part of the immovable; but the effects of a constitution of this character are subordinate to the result of the partition or sale among the co-owners.

**3158** [3124]. When a co-owner who has mortgaged his undivided interest only, becomes under the division or sale the owner of the entire immovable held in common, the mortgage is limited to the undivided interest which the mortgagor had in the immovable.

**3159** [3125]. A person who has in an immovable merely a right subject to a condition, to rescission or resolution, cannot constitute mortgages except subject to the same conditions, even though this is not stated.

**3160** [3126]. A mortgage constituted upon an immovable belonging to another is not valid, not even if the mortgagor acquires it subsequently, nor if the person to whom the immovable belongs succeeds the mortgagor under a universal title.

**3161** [3127]. The nullity of a mortgage constituted on another's property may be set up not only by the owner of the immovable, but also by those to whom the mortgagor sold the immovable after having become the owner thereof, or even by the mortgagor himself, unless he has acted in bad faith.

## CHAPTER II.

### Of the Form of Mortgages and their Record.

**3162** [3128]. A mortgage may be constituted only by a public deed or by documents, which, serving as titles to the ownership or real right, are issued by a competent authority, and must constitute full proof *per se*. The mortgage deed and the contract to which it relates may be embodied in the same instrument.

**3163** [3129]. A mortgage may be constituted also on immovable property situated within the territory of the Republic, by instruments executed in foreign countries, subject to the conditions and in the forms prescribed by Art. 1245 [1211]. A mortgage so constituted must be recorded in the office of the registrar of mortgages (*oficio de hipotecas*) within a term of six days after the date the judge orders the protocolization of the mortgage obligation. After the expiration of this term, the mortgage does not prejudice third persons. A mortgage constituted by a deed executed in a foreign country must have a cause which is lawful under the laws of the Republic.

**3164** [3130]. The constitution of a mortgage must be accepted by the creditor. When it has been established by a public deed in which the creditor is not a party, it may be

accepted subsequently with retroactive effect to the date of its constitution.

**3165** [3131]. The mortgage deed must contain: 1. The name, surname, and domicile of the debtor and the same statements regarding the creditor, those of juristic persons according to their legal name, and the place of their establishment. 2. The date and nature of the contract to which it is subservient and the archives in which it is filed. 3. The situation of the estate and its metes and bounds, and if a rural estate, the district to which it belongs; and if urban, the city or town and street where it is situated. 4. The exact amount of the debt.

**3166** [3132]. A collective designation of the immovables which the debtor mortgages, as existing in a certain place or city, is not sufficient to give the constitution of the mortgage the essential condition of an exact description of the immovable encumbered. The mortgage deed must set forth separately and individually the nature of the immovable.

**3167** [3133]. The constitution of a mortgage is not annulled by reason of the absence of any of the statements prescribed, provided the statement lacking can be positively ascertained. It is incumbent upon the courts to decide the matter by the consideration of all the statements contained in the mortgage deed as a whole.

**3168** [3134]. A mortgage constituted in accordance with the conditions prescribed must be filed and recorded in a public office provided for the constitution of mortgages or their record, to be situated in the capital city of each Province and in the other towns where the provincial government may establish them.

**3169** [3135]. The constitution of a mortgage does not prejudice third persons until made public by its record in the registries provided for said purpose. But the contracting parties, their heirs and the persons who have taken part in the execution of the deed, such as the notary and witnesses, cannot take advantage of a failure to record it; and so far as they are concerned, a mortgage constituted by a public deed is considered as recorded.

**3170** [3136]. If the mortgage obligation has been constituted but the mortgage not yet recorded, and the legal term within which to do so is still running, a subsequent creditor, knowing of the mortgage obligation, has the mortgage constituted for the security of his credit recorded first, the priority of the record is void as to the first mortgage, if the latter is recorded within the legal period.

**3171** [3137]. The record must be made within six days after the execution of the mortgage deed in order for the mortgage to be effective against third persons. If the office for the recorder of mortgages is situated at a distance of more than two leagues from the notarial office in which the mortgage deed was executed, one day more shall be allowed for the record for every two leagues.

**3172** [3138]. For the purposes of the record, the first copy<sup>16</sup> of the mortgage deed must be presented to the public official in charge of the mortgage registration office, when not executed in said office. The expenses of the registration or record are at the cost of the debtor.

**3173** [3139]. The record must be confined to a statement of the date of the mortgage deed, the notary before whom it was executed, the names of the parties thereto, their residence, the character of the obligation or contract, and the real property encumbered, as shown by the instrument, giving the names, situation and boundaries thereof, in the same form as set forth in the instrument.

**3174** [3140]. The record may be demanded:

1. By the grantor of the right.
2. By the grantee thereof.
3. By the person having the legal representation of either of them.
4. By the person having an interest in securing the mortgage right.

**3175** [3141]. If the mortgage deed is forwarded for record by the notary before whom the mortgage obligation was exe-

<sup>16</sup> The copy taken directly from the original by the notary by whom the contract was drawn; the copy of the original to which each of the parties thereto is entitled, (Escriche, *Diccionario de Legislacion y Jurisprudencia*.)

cuted, the registrar must record it within a term of twenty-four hours. Any other record of a mortgage upon the same immovable, made during the intervening period of twenty-four hours, is void.

**3176 [3142].** If the person who has given a mortgage on his property takes advantage of the failure to record it to mortgage it to another person, without notifying him of the existence of the first mortgage, he shall be guilty of fraud (*fraude*), and, therefore, liable for damages to the person who sustains them through his *dolus*.<sup>17</sup>

**3177 [3143].** The record must be made in the office of the registrar of mortgages within whose district the mortgaged immovables are situated.

**3178 [3144].** The records of mortgages must be entered in the registries successively, without any blank spaces being left between them in which another record could be entered.

**3179 [3145].** The mortgage having been recorded, a note of the record must be made upon the mortgage deed by the official in charge of the mortgage registration office, over his signature, stating the date on which he recorded it, and the folio of his book at which the mortgage was recorded.

**3180 [3146].** The official in charge of mortgages shall not, without an order from the judge, issue certificates of the mortgages recorded, nor certificates to the effect that certain immovable property is unencumbered.

**3181 [3147].** He is responsible for the omission of records in his books, or for having made them at a time not within the legal term. He is also responsible for any damages sustained by the creditor on account of a failure to mention in his certificates the existing records or entries, or for denying a record demanded by a person authorized to demand it.

**3182 [3148].** The nullity resulting from the absence of an exact statement of the mortgage constituted may be set up by third persons as well as by the debtor himself.

<sup>17</sup> See Arts. 965-969.



### CHAPTER III.

#### Effect of Mortgages with Respect to Third Persons and the Credit.

**3183 [3149].** A recorded mortgage produces its effects against third persons from the date of the execution of the mortgage obligation, if the record was made within the six days allowed therefor.

**3184 [3150].** If the creditor permits the time allowed for the record of the mortgage to elapse without having it made, the mortgage does not produce any effect against third persons, except from the date of its record. But he may have it recorded at any time without the necessity of judicial authorization.

**3185 [3151].** A recorded mortgage protects the rights of the creditor in the immovable mortgaged for a term of ten years, if not renewed before.

**3186 [3152].** A mortgage guarantees the principal of the credit, as well as the interest accruing from the date of its constitution, if interest is stipulated in the obligation. Upon the constitution of a mortgage for a prior credit, the interest in arrears, if any, must be liquidated and fixed at a certain sum. A statement that the mortgage covers interest in arrears, without any designation of the amount thereof, is null and void.

**3187 [3153].** A mortgage guarantees limited, conditional, or eventual credits, in as full a manner as pure and simple credits.

**3188 [3154].** The holder of a limited credit payable at a certain time, may, when the proceeds of the sale of the property mortgaged to him are to be distributed, demand that he be ranked as a creditor whose claim is due and payable.

**3189 [3155].** If the credit is subject to a resolutory condition, the creditor may demand that he be ranked as a present claimant, upon giving security to return the amount which may be allotted to him, in the event of the performance of the condition.

**3190** [3156]. If it is subject to a suspensive condition, the creditor may demand that the funds be deposited, if the subsequent creditors do not prefer to give him mortgage security to return the money received by them, in the event of the condition being fulfilled.

## CHAPTER IV.

### Of the Relations which a Mortgage Establishes between the Debtor and the Creditor.

**3191** [3157]. The debtor who owns the mortgaged immovable retains the exercise of all the powers inherent in the right of ownership; but he cannot, to the prejudice of the rights of the mortgagee, perform any act of material or juridical dispossession, entailing as a direct consequence a reduction in the value of the property mortgaged.

**3192** [3158]. Every mortgagee, even when his claim is subject to a term or a condition, has the right to secure his credit by demanding the adoption of the proper measures against the acts of which the preceding article treats.

**3193** [3159]. When the deterioration has been consummated, and the value of the immovable mortgaged is reduced to such an extent as not to furnish full and complete security to the mortgagees, they may, even when their credits are conditional or eventual, demand an appraisal of the deterioration caused, and the deposit of the amount thereof, or bring suit for the enlargement of the mortgage.

**3194** [3160]. The mortgagees have a similar right when the owner of an estate or building transfers the movables accessory thereto, and delivers them to a grantee in good faith.

**3195** [3161]. In the cases of the three preceding articles the mortgagees may, even when their credits are not due, bring an action to have the debtor deprived of the benefit of the time which the contract gave him.

## CHAPTER V.

### Of the Relations which a Mortgage Establishes between Mortgagees and Third Possessors Owning the Mortgaged Property.

**3196 [3162].** If the debtor alienates, either under an onerous or a lucrative title, all or part of the thing or a dismemberment thereof, which is in itself susceptible of mortgage, the creditor may pursue it in the hands of the grantee and demand its attachment and sale in the same manner as he could proceed against the debtor. But if the thing alienated is a movable, which became immovable and subject to mortgage only as an accessory of an immovable, the creditor cannot pursue it in the hands of a third person.

**3197 [3163].** In the case of the first part of the foregoing article, before demanding payment of the debt from the third party in possession, the creditor must make a demand upon the debtor for payment of the principal and accrued interest, within three days, and if the debtor fails to make such payment, whatever be the excuse advanced, he may have recourse to the third party in possession and demand that he pay the debt or relinquish the immovable which is security therefor.

**3198 [3164].** The third party in possession, and the owner of the immovable mortgaged, enjoys the terms and periods granted the debtor by the contract or by an act granting a period of grace, and an action to recover the mortgage debt cannot be brought against him before it becomes demandable of the latter. But the terms and periods granted a bankrupt debtor to enable him to pay the claims filed against him in the bankruptcy proceedings, do not benefit the third party in possession.

**3199 [3165].** If he refuses to pay the mortgage debt and to relinquish the immovable, the courts cannot on this account pronounce personal judgments against him in favor of the creditor, and the latter has no other right than to pursue the sale of the immovable.

**3200** [3166]. The third party in possession is allowed to set up as a defense against the seizure of the immovable under execution, the non-existence or the extinction of the mortgage right, as well as the nullity of the record thereof or the inalienability of the debt.

**3201** [3167]. The third party in possession cannot demand that execution be levied first on other immovables mortgaged as security for the same credit in the possession of the original debtor, nor set up that the immovable held by him is subject to other prior mortgages which the proceeds of the sale thereof will be insufficient to cover.

**3202** [3168]. Nor can he demand the retention of the mortgaged immovable in order to be paid the necessary or useful expenses incurred by him, and his right is limited, even with respect to the necessary expenses, to the balance remaining from the proceeds of the sale of the mortgaged immovable after payment of the creditor and the costs of the execution.

**3203** [3169]. He may relinquish the immovable mortgaged, and free himself of the action of the execution creditors, if he is not personally bound, as heir, co-debtor, or surety of the debtor. The relinquishment by the third party in possession does not authorize the creditors to appropriate the immovable or retain possession thereof, and their right with respect thereto is reduced to having it sold and recovering payment out of the proceeds of the sale.

**3204** [1370]. A third party in possession who is dispossessed of the immovable or who relinquishes it at the petition of mortgagees, shall be fully indemnified by the debtor, the indemnity to include the improvements he has added to the immovable.

**3205** [3171]. If the third party in possession objects to making payment or relinquishing the immovable, he is authorized to have the third parties in possession of any other immovables which have been mortgaged as security for the same credit, summoned in the proceedings, for the purpose of having them adjudged, by way of indemnity, to contribute to the payment of the debt in proportion to the value of the immovables which each possesses.

**3206** [3172]. The third party in possession does not have the power to relinquish the property mortgaged and liberate himself from the action, when under the contract of his grant or by a subsequent act he obligated himself to pay the credit.

**3207** [3173]. The relinquishment of the mortgaged immovable can be made only by a person capable of alienating his property. Tutors or curators of incapacitated persons may do so only when duly authorized by the judge, after hearing the Department of Minors.

**3208** [3174]. Upon the relinquishment of the mortgaged property, the judge shall appoint a curator therefor against whom the execution proceedings shall be continued.

**3209** [3175]. The ownership of the immovable relinquished does not cease to belong to the third party in possession, until it has been adjudicated by the judicial judgment; and if lost by a fortuitous event before the adjudication, the loss runs for the account of the third party in possession, who shall be obliged to pay the value thereof.

**3210** [3176]. Notwithstanding the relinquishment made by the third person in possession, he may retain the immovable upon payment of the principal and accrued interest, even when he possesses only a part of the property mortgaged, or when the sum due exceeds the value of the immovable.

**3211** [3177]. The vendor of the mortgaged immovable may object to the relinquishment sought to be made by the third party in possession, when the pure and simple execution of the contract of sale may provide a sum sufficient for the payment of the credits.

**3212** [3178]. The vendor of the mortgaged immovable may, before the adjudication, compel the third party in possession who has relinquished it, to take it again and perform the contract of sale, when the vendor has paid the mortgagees.

**3213** [3179]. The mortgagees are authorized, even before their credits become demandable, to bring against the third party in possession all the actions which they could bring against the debtor himself, to prevent the performance of acts liable to reduce the value of the mortgaged immovable.

**3214 [3180].** Leases made by the third party in possession may be annulled, when they have not acquired a date certain before demand for payment or the relinquishment of the immovable; but those which have a date certain before demand for payment, must be upheld.

## CHAPTER VI.

### Consequences of Expropriation Proceedings Against the Third Party in Possession.

**3215 [3181].** The personal or real servitudes which the third party in possession had upon the mortgaged immovable before his acquisition thereof, and which had become extinguished by merger or confusion, revive after the expropriation; and *vice versa*, the expropriation causes the revival of the active servitudes due the immovable expropriated by another immovable which belongs to the third party in possession.

**3216 [3182].** The third party in possession may enforce in their proper order the mortgages acquired by him upon the immovable mortgaged before he became the owner thereof.

**3217 [3183].** The creditors may bring an action to obtain the sale of the property mortgaged free from the servitudes which the third party in possession has imposed thereon.

**3218 [3184].** After the payment of the mortgage credits, the remainder of the proceeds of the expropriation belongs to the third party in possession, to the exclusion of the former owner, and of the chirograph creditors.<sup>18</sup>

**3219 [3185].** The third party in possession who pays the mortgage credit is subrogated in the mortgages which the creditor whom he paid had as security for his credit, not only upon the immovable released, but also upon the other immovables mortgaged as security for the same credit, without the necessity of the mortgage creditor assigning to him his rights of action.

<sup>18</sup> See note 21, p. 155.

**3220** [3186]. When a person other than the debtor gave the mortgage for the security of the credit, the action to recover indemnity which he can bring is that which a surety who has made payment could bring, and he may demand of the debtor, after the expropriation, the full value of the immovable, whatever be the price for which it was sold.

## CHAPTER VII.

### Of the Extinguishment of Mortgages.

**3221** [3187]. A mortgage terminates by the total extinguishment of the principal obligation occurring in any of the modes designated for the extinction of obligations.

**3222** [3188]. The co-debtor or coheir of the debtor who who paid his share in the mortgage, cannot demand the cancellation of the mortgage before the debt is paid in full. The co-creditor or coheir of the creditor, to whom his share has been paid, does not have the right either to have the mortgage canceled before the other co-creditors or coheirs have been paid in full.

**3223** [3189]. The payment of the debt by a third person subrogated to the rights of the creditor, does not extinguish the mortgage.

**3224** [3190]. If the creditor who makes novation of the first obligation with his debtor, reserved the mortgage constituted for the security of his credit, the mortgage continues as security for the new obligation.

**3225** [3191]. A mortgage given by a surety continues in force even when the security is extinguished by confusion.

**3226** [3192]. The consignment of the amount due, made by the debtor to the order of the creditor, does not extinguish the mortgage before the acceptance of the consignment by the creditor, or before a judgment which has acquired the force of *res judicata* has given it the force of payment.

**3227** [3193]. A mortgage is extinguished by the express waiver of his mortgage right by the creditor, reduced to a

public instrument, consenting to the cancellation of the mortgage. The debtor in such case has the right to demand that a record of this fact be entered in the mortgage registry, and that it be noted on the mortgage deed.

**3228** [3194]. The extinguishment of a mortgage takes place when the person who granted it had in the immovable merely a resolute or conditional right, and the condition is not fulfilled, or the contract whereby he acquired it is resolved.

**3229** [3195]. If the immovable mortgaged contains buildings and they are destroyed, the mortgage stands on the land only, and not upon the materials of which the building consisted. If the latter is rebuilt, the mortgage encumbers it again.

**3230** [3196]. The mortgage is extinguished, even when not canceled in the registry of mortgages, as to the person who has acquired the estate at a public sale held by order of the judge, after citation of the creditors holding mortgages on the property, as soon as the purchaser deposits the price of the sale to the order of the judge.

**3231** [3197]. A mortgage is extinguished when ten years since its record in the office of the registrar of mortgages have elapsed.

**3232** [3198]. If the irrevocable ownership and the condition of a mortgagee become merged in the same person, the mortgage is naturally extinguished.

## CHAPTER VIII.

### Of the Cancellation of Mortgages.

**3233** [3199]. A mortgage and the record thereof shall be canceled by the consent of parties who have the capacity to dispose of their property, or by a judgment which has become *res judicata*.

**3234** [3200]. The courts must order the cancellation of mortgages when the record thereof was not based on a deed



sufficient to constitute a mortgage, or when the mortgage has ceased to exist by reason of any legal cause, or when the credit has been paid.

**3235 [3201].** The registrar of mortgages cannot cancel them unless public instruments showing the agreement of the parties, or the payment of the credit, or the judgment of the court ordering their cancellation are presented to him.

**3236 [3202].** If the debt for which the mortgage was given is to be paid in different installments, and notes have been given for this purpose, these documents and their renewals must be signed by the registrar of mortgages in order for them to be taken on account of the mortgage credit; and the debtor or a third person may, with such instruments, when paid in full, request the cancellation of the mortgage. The registrar of mortgages must make mention of the date of the act wherefrom these instruments are derived.

**3237 [3203].** If the creditor is absent and the debtor has paid the debt, he may petition the judge of the place where payment was to have been made to cite the creditor by notices to come forward and have the mortgage cancelled, and if he fails to appear the judge shall appoint a person to represent him with whom the proceedings for the payment of the credit and the cancellation of the mortgage shall be continued.

## TITLE XV. OF PLEDGE.

**3238 [3204].** A pledge is constituted when the debtor of a certain or conditional obligation, present or future, delivers to the creditor a movable thing or a credit as security for the debt.

**3239 [3205].** The possession which the debtor gives the creditor of the thing pledged must be a real possession in the sense of the provisions relating to the tradition of corporeal things. The former warrants against eviction<sup>19</sup> of the thing pledged.

<sup>19</sup> See note 61, Art. 2123.

**3240** [3206]. The rights which the constitution of the pledge vests in the creditor subsist only as long as the thing remains in his possession or in the possession of a third person agreed on by the parties.

**3241** [3207]. When the object pledged was not delivered to the creditor in person, but is in the possession of a third party, it is necessary that the latter have received from both parties the charge to keep it in the interest of the creditor.

**3242** [3208]. The creditor is considered to be still in possession of the pledge when he has lost it or when it has been stolen from him, or when he has delivered it to a third person who has bound himself to return it to him.

**3243** [3209]. If the object pledged is a credit, or industrial or commercial stock not transferable by indorsement, the contract, in order for the pledge to be constituted, must be communicated to the debtor of the credit pledged, and the title must be delivered to the creditor or a third person, even though it represent an amount greater than the debt.

**3244** [3210]. A new pledge may be given upon the same thing, provided the second creditor obtains jointly with the first creditor the possession of the thing pawned, or that it is placed in the hands of a third person for the common account. The right of the creditors in the thing pawned follows the order in which the pledge was constituted.

**3245** [3211]. All movable things and active debts may be given in pledge.

**3246** [3212]. A credit which is not evidenced by a written instrument cannot be given in pledge.

**3247** [3213]. The only person who can constitute a pledge is the person who is the owner of the thing and capable of disposing thereof, and only a person capable of contracting can receive the thing in pledge. A creditor who has received in good faith from the debtor an object of which the latter was not the owner, may, if the thing has been lost or stolen, refuse to deliver it to the real owner.

**3248** [3214]. If the thing has been lost by or stolen from its owner, and the debtor has purchased it at a public sale or from an individual who customarily sells similar things, the

owner may recover it from the creditor upon payment of whatever it cost the debtor.

**3249 [3215].** When the creditor has received in pledge a thing belonging to another believing it to be the debtor's, and returns it to the owner who claims it, he may demand that another pledge of equal value be given him; and if the debtor does not do so, he may demand the performance of the principal obligation, even though the time for payment has not arrived.

**3250 [3216].** The pledge of a thing belonging to another, even when it does not affect the thing, produces nevertheless personal obligations between the parties.

**3251 [3217].** In order to enable the constitution of a pledge to be set up against third persons, it must be evidenced by a public or private instrument of a date certain, whatever be the amount of the credit. The instrument must state the amount of the credit and contain a detailed description of the kind and nature of the objects given in pledge, their quality, their weight and their measure, if these details are necessary to determine the individuality of the thing.

**3252 [3218].** If the debtor who has given the pledge owes another debt to the same creditor which had been contracted subsequently, and which becomes demandable before the payment of the first, the creditor is not obliged to return the pledge before the payment of both debts, even when there was no stipulation that the thing was to be security for the payment of the second.

**3253 [3219].** The provisions of the foregoing article do not apply if the new debt, even though owed by the same debtor and demandable before the payment of that for which the pledge was given, belongs to the same creditor through his having received it from a third person by assignment, subrogation, or succession.

**3254 [3220].** The right of the creditor in the pledge on account of the second debt is limited to the right of retention, but he does not acquire thereunder the privileges of a pledgee, for which the thing was expressly given him in pledge.

**3255 [3221].** The right to retain the pledge in the case

of the preceding article does not lie when the pledge has been constituted by a third person.

**3256** [3222]. Any clause authorizing the creditor to appropriate the pledge, even when the pledge is of less value than the debt, or to dispose thereof in any other than the modes established in this title, is void. A clause which deprives the creditor of the right to solicit the sale of the thing is also void.

**3257** [3223]. The debtor may, nevertheless, agree with the creditor that the pledge may be retained by him for the amount of the valuation thereof at the time of the maturity of the debt, but not at the time of the contract.

**3258** [3224]. If the debtor fails to discharge his debt at the time stipulated, the creditor may, in order to recover the payment of his credit with the privilege<sup>20</sup> which the law grants him on the price of the thing, demand that the pledge be sold at public auction with service of notice on the debtor. If the pledge does not exceed 200 *pesos* in value, the judge may order the private sale thereof. The creditor may acquire the pledge by purchase at public auction, or at the private sale, or by its adjudication to him.

**3259** [3225]. The creditor is answerable for the loss or deterioration of the pledge due to his fault or negligence.

**3260** [3226]. The creditor cannot make use of the thing which he has received in pledge without the consent of the debtor.

**3261** [3227]. If the creditor loses the tenancy of the thing, he may recover it from any one in possession thereof, without excepting the debtor.

**3262** [3228]. The debtor owes the creditor the necessary expenses he has incurred in the preservation of the pledge, even though the pledge subsequently perishes. The creditor cannot demand reimbursement of the useful expenses or improvements except of those which have enhanced the value of the thing.

**3263** [3229]. The debtor cannot demand the return of the thing before he pays the debt, the interest and the expenses incurred.

<sup>20</sup> See Art. 3909 [3875].

**3264** [3230]. If the creditor abuse the pledge, exercising rights therein which he does not have, the debtor may demand that the thing be sequestrated.

**3265** [3231]. If the pledge produces fruits or interest, the creditor shall collect them for the account of the debtor and shall appropriate them to the interest on the debt, if owing, or to the principal, if not owing.

**3266** [3232]. The right which the pledge vests in the creditor extends to all the accessories of the thing and to all the increases thereof, but the ownership of the accessories belongs to the owner.

**3267** [3233]. A pledge is indivisible notwithstanding the division of the debt. The heir of the debtor who has paid his portion of the debt cannot demand his share in the pledge before the debt has been discharged in full, and *vice versa*, the heir of the creditor who has received his share of the debt cannot release the pledge to the prejudice of the coheirs who have not been paid.

**3268** [3234]. The indivisibility of the pledge does not deprive the other creditors of the power to have it sold without being obliged to first discharge the debt. The right of the creditor is limited to the exercise of his privilege<sup>21</sup> on the price of the thing.

**3269** [3235]. When a number of things have been given in pledge, one of them cannot be withdrawn without the full payment of the obligation.

**3270** [3236]. A pledge is extinguished by the extinction of the principal obligation for which it is security.

**3271** [3237]. It is extinguished also when under any title whatsoever the ownership of the thing pawned passes to the creditor.

**3272** [3238]. When the right of pledge has been extinguished by the payment of the debt, the creditor is obliged to return to the debtor the thing pledged, with all the accessories appurtenant thereto at the time of the contract and the accessions which it has received since.

<sup>21</sup> See Art. 3909 [3875].

**TITLE XVI. OF ANTICHRESIS.**

**3273** [3239]. Antichresis is the real right granted the creditor by the debtor, or by a third person for him, placing him in possession of an immovable and authorizing him to collect the fruits in order to appropriate them annually to the interest of the credit, if owing: and if in excess thereof, to the principal, or to the principal only, if no interest is owing.

**3274** [3240]. A contract of antichresis is perfected between the parties only by the actual delivery of the immovable, and is not subject to any other formality.

**3275** [3241]. Antichresis may be constituted only by an owner having the capacity to dispose of the immovable, or by the person entitled to its fruits.

**3276** [3242]. A usufructuary may give his right of usufruct in antichresis.

**3277** [3243]. A husband may also give in antichresis the fruits of the immovable property of his wife, during the existence of the marriage, or until a separation of property takes place.

**3278** [3244]. A person who has merely the power to administer cannot constitute an antichresis.

**3279** [3245]. The creditor is authorized to retain the immovable delivered to him in antichresis until his principal and accessory credit have been paid in full. The right of retention of the creditor is indivisible, in the same way as that resulting from a pledge.

**3280** [3246]. The creditor is authorized to collect the fruits of the immovable, with the charge of appropriating their value to the amount owing, and to render an account to the debtor. The parties may, nevertheless, agree that the fruits be compensated against the interest, either in their totality or to a specified amount.

**3281** [3247]. In the absence of an agreement between the parties as to the compensation of the fruits against the interest, the creditor must, nevertheless, compensate them, and give an account thereof to the debtor.

**3282 [3248].** If the debt does not earn interest, the fruits shall be taken as a reduction of the principal.

**3283 [3249].** The creditor may, by all the means which a good administrator would employ, collect the fruits of the immovable. He may gather them, cultivating the land himself, or lease the estate; he may occupy the house which has been given him in antichresis, receiving as the fruit thereof the rental which another would pay. But he cannot make any change in the immovable, nor alter the manner in which the owner worked it, when the result thereof would be that the debtor, after having paid his debt, would be unable to work the immovable in the manner in which he formerly worked it.

**3284 [3250].** If the creditor adds improvements to the immovable, he must be reimbursed therefor by the owner in the amount whereby the value of the estate has been enhanced; but the sum due on account of this enhanced value cannot exceed the amount which the creditor has expended.

**3285 [3251].** If the debtor fails to pay the credit at the time stipulated, the creditor may judicially demand the sale of the immovable. Any agreement granting him the right personally to sell the immovable which he holds in antichresis is void.

**3286 [3252].** Any clause authorizing the creditor to take the ownership of the immovable for the amount of the debt in default of payment when due, is void; as is any clause which would make him the owner of the immovable for the price fixed by experts named by the parties or by the court.

**3287 [3253].** The debtor may, nevertheless, sell to the creditor the immovable given in antichresis, before or after the maturity of the debt.

**3288 [3254].** The creditor may enforce his rights under the antichresis against the third grantees of the immovable, as well as against chirograph creditors<sup>22</sup> and against mortgage creditors whose credits are of a date subsequent to the establishment of the antichresis.

**3289 [3255].** But if he applies for the sale of the immovable, he has no pledge privilege on the proceeds of the sale.

<sup>22</sup> See note to Art. 995 [961].

**3290** [3256]. A creditor who holds a mortgage on the immovable received in antichresis, may enforce his rights as if he were not an antichresis creditor.

**3291** [3257]. The debtor cannot demand the return of the immovable given in antichresis until after the debt has been discharged in full; but the creditor may return it at any time, and pursue the payment of his credit by legal means, without prejudice to any agreement to the contrary.

**3292** [3258]. The creditor is obliged to take care of the immovable and provide for its preservation. If through his fault or negligence the immovable suffers some damage, he must repair it, and if he should abuse his powers, he may be adjudged to return it even before his credit has been paid. But he is authorized to deduct from the value of the fruits the expenses which he has incurred in the preservation of the thing, and in the event of the insufficiency of the fruits, he may collect them from the debtor, unless it has been agreed that the full amount of the fruits should be compensated against the interest. In such case he can recover from the debtor only such expenses as a usufructuary is authorized to recover from the naked owner.

**3293** [3259]. The creditor is also obliged to pay the taxes and annual charges upon the immovable, deducting from the fruits any disbursements he makes, or recovering them from the debtor, as in the case of the next preceding article.

**3294** [3260]. He is liable to the debtor if he has failed to preserve all the rights existing in favor of the estate when he received it in antichresis.

**3295** [3261]. As soon as the creditor has recovered full payment of his credit, he must return the property to the debtor. But if the debtor, after having given the immovable in antichresis, contracts a new debt to the same creditor, the provisions relating to a thing given in pledge shall be observed.





## BOOK IV.

### OF REAL AND PERSONAL RIGHTS.

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#### GENERAL PROVISIONS.

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#### PRELIMINARY TITLE. OF THE TRANSMISSION OF RIGHTS IN GENERAL.

**3296** [3262]. The persons to whom the rights of other persons are transmitted in such manner that they may thereafter exercise them in their own name, are called successors. They have this character, either under the law, or under the will of the individual to whose rights they succeed.

**3297** [3263]. A universal successor is one to whom all or an aliquot part of the patrimony of another passes.

A singular successor is one to whom a particular object out of the property of another person is transmitted.

**3298** [3264]. Universal successors are at the same time particular successors with relation to the particular objects which form part of the universality to which they succeed.

**3299** [3265]. All the rights which a person transfers to another person by contract pass to the grantee of said rights only by tradition, excepting the provisions relating to successions.

**3300** [3266]. The obligations of the person who has transmitted a thing, with respect to such thing, pass to the universal successor and to the particular successor; but the particular successor is not bound with his person or property for the obligations of his predecessor in interest, as to which he represents him, but is bound only with the thing transmitted.

**3301 [3267].** A particular successor may take advantage of the contracts entered into with his predecessor in interest.

**3302 [3268].** A particular successor cannot claim those rights of his predecessor in interest which, even though they relate to the object transmitted, are not based on obligations which pass from the predecessor to the successor, unless under the law or a contract such rights are to be considered as accessory to the object acquired.

**3303 [3269].** When a person has contracted at different times with a number of persons, the obligation to transmit to them his rights in one and the same thing, the person first put into possession of the thing enjoys preference over the others in the execution of the contract, even though his title be of more recent date, provided he was acting in good faith at the time the thing was delivered to him.

**3304 [3270].** No one can transmit to another a better or broader right in an object than that which he himself enjoyed; and, *vice versa*, no one can acquire in an object a better and broader right than that which the person had from whom he acquired it.

**3305 [3271].** The provisions of the preceding article do not apply to the possessor of movable things.

**3306 [3272].** Likewise, the obligations incumbent upon the owner of a movable thing cannot be set up against the persons who have acquired possession thereof from him.

**3307 [3273].** The ownership of an immovable may be acquired by prescription, even when the character of the possession of the person from whom it is had, would not have permitted him to acquire it in that manner.

**3308 [3274].** The mortgages which the owner of an immovable has constituted, do not produce their effect against a third party in possession unless they have been recorded in due time.

**3309 [3275].** The juridical act whereby a person transmits to another the right to make use of a thing after having transmitted this right to a third person, is void.

**3310 [3276].** The acts of the owner of the thing with relation to the rights which ownership comprises are binding upon the successor.

**3311** [3277]. Any violence, error, *dolus* or irregularities present in the title of the person who transmits a right, may likewise be invoked against the successor.

**3312** [3278]. A right which has been revocable since the time of its constitution continues revocable in the hands of the successor.

**SECTION I. OF THE TRANSMISSION OF RIGHTS BY  
THE DEATH OF THE PERSONS IN WHOM  
THEY WERE VESTED.**

**TITLE I. OF SUCCESSION.**

**3313 [3279].** Succession is the transmission of the active and passive rights which make up the inheritance of a deceased person, to the surviving person whom the law or the testator calls to receive it. The person called to receive the succession is called in this Code the heir.

**3314 [3280].** The succession is called legitimate, when it is offered only by the law, and testamentary when offered by the will of man expressed in a valid testament. The inheritance of one and the same person may be offered by the voluntary act of man as to one part, and by a provision of the law as to the other.

**3315 [3281].** Succession under a universal title is that the object of which is an ideal whole, without regard to its particular parts, nor to the objects of those rights.

**3316 [3282].** The succession or hereditary right, in legitimate as well as in testamentary successions, becomes open at the moment of the death of the person from whom the succession is derived, or by the presumption of his death in the cases prescribed by law.

**3317 [3283].** The right of succession to the patrimony<sup>1</sup> of the deceased is governed by the local law of the domicile of the deceased at the time of his death, whether the successors be nationals or foreigners.

**3318 [3284].** The judges of the place of the last domicile of the deceased have jurisdiction of the succession. The following must be instituted before the judges of said place:

<sup>1</sup>*Patrimonio*: Applied sometimes to any kind of property, under whatever title acquired, but in a less broad sense, applied to the property or estate of a family; and sometimes this term signifies only the property falling to a person by succession from his parents or ancestors. (Escriche, *Diccionario de Legislacion y Jurisprudencia*.)

1. Actions relating to the hereditary property, to and including the partition, when brought by any of the universal successors against their coheirs.

2. Actions relating to the guarantees of the shares between the coparceners, and actions for the modification or annulment of the partition.

3. Actions relating to the execution of the dispositions of the testator, even though under a particular title, as well as those regarding the delivery of legacies.

4. The personal actions of the creditors of the deceased, before the division of the inheritance.

**3319** [3285]. If the deceased has not left more than one heir, the actions must be brought before the judge of the domicile of said heir, after his acceptance of the inheritance.

**3320** [3286]. The capacity to succeed is governed by the law of the domicile of the person at the time of the death of the person from whom the succession is inherited.

**3321** [3287]. The capacity to acquire a succession must be had at the moment the succession is offered.

**3322** [3288]. Every visible or juristic person, in the absence of a provision of the law to the contrary, enjoys the capacity to succeed or to receive a succession.

**3323** [3289]. There are no other incapacities to succeed or to receive successions than those designated in this Title and in the Title *Of Testamentary Successions*.

### Of Incapacity to Succeed.

**3324** [3290]. A child conceived is capable of succeeding. A child not conceived at the time of the death of the person leaving the succession, cannot succeed him. Nor can a child succeed him which, having been conceived, is born dead.

**3325** [3291]. Persons sentenced after trial for killing or attempting to kill the person whose succession is involved, or his or her spouse, or his or her descendants, or of being an accomplice of the direct author of the act, are incapable of succeeding as unworthy. This cause of unworthiness cannot

be purged, either by the pardon of the criminal, or the prescription of the penalty.

**3326 [3292].** An heir of full age who, knowing of the violent death of the person leaving the succession, fails to denounce it to the judges within the term of one month, when proceedings in the matter have not been instituted by the State, is also unworthy of succeeding. If the homicides are ascendants or descendants, the husband or wife, or brothers or sisters of the heir, the latter's obligation to make the denunciation ceases.

**3327 [3293].** So is one who willfully accused or denounced the deceased of having committed a crime for which he could have been sentenced to imprisonment, or to labor on public works, for five years or more.

**3328 [3294].** A person convicted on trial of adultery with the wife of the deceased is likewise unworthy.

**3329 [3295].** So is the relative of the deceased who, finding him insane and abandoned, did not take him in, or take steps to have him admitted to a public institution.

**3330 [3296].** A person who, by force or fraud, prevented the deceased from making a testament, or revoking one already made, or who abstracted it, or who forced the deceased to make a testament, is incapable of succeeding.

**3331 [3297].** The causes of unworthiness mentioned in the preceding articles cannot be set up against testamentary dispositions subsequent to the acts which produce them, even though proof be offered that the deceased had no knowledge of such acts at the time he made his testament or thereafter.

**3332 [3298].** Unworthiness is purged by three years' possession of the inheritance or legacy.

**3333 [3299].** The debtors of the succession cannot set up against the complainant the defense of incapacity or unworthiness.

**3334 [3300].** The inheritance or legacy of which its author made himself unworthy is transmitted to the heirs, but with the same vice of unworthiness for the entire period lacking to complete the three years.

**3335 [3301].** The children of the unworthy person come

into the succession in their own right and without the aid of representation,<sup>2</sup> and are not excluded by the faults of their father; but the latter can in no case claim in the property of such succession the usufruct which the law grants parents in the property of their children.

**3336 [3302].** In order to determine the incapacity or unworthiness, only the date of the death of the person whose inheritance is involved shall be considered.

**3337 [3303].** A person who has been declared unworthy of succeeding, is excluded only from the inheritance of the person against whom he has committed the offense for which his unworthiness has been declared.

**3338 [3304].** Exclusions on account of incapacity or unworthiness may be sued for only by the relatives who are called to the succession in default of the person excluded from the inheritance, or in concurrence with him.

**3339 [3305].** An unworthy heir who has entered into possession of the property is obliged to return to the persons to whom the inheritance passes on account of his unworthiness, all the hereditary objects of which he has taken possession, with all the accessories and increase they have received, and the products or income he has derived from the property of the inheritance since the opening of the succession.

**3340 [3306].** He is likewise obliged to pay interest on all the sums of money belonging to the inheritance which he has received, even when he has not received any interest whatsoever thereon.

**3341 [3307].** An action for the revendication <sup>3</sup> of the property of the succession may be brought against the heirs of the unworthy person.

**3342 [3308].** The credits which the heir who is excluded on account of unworthiness had against the inheritance, and those of which he was the debtor, as well as his rights against the succession by reason of necessary or useful expenses, revive together with the guarantees which secured them, as if they had never been extinguished by confusion.

<sup>2</sup> See Art. 3583 [3549].

<sup>3</sup> See Art. 2792 [2758].



**3343** [3309]. The sales made by the heir excluded from the succession as unworthy, the mortgages and servitudes constituted by him in the intermediate time, as well as his donations, are valid, and the only action which lies against him is one for damages.

**3344** [3310]. The grants under an onerous or gratuitous title, the mortgages and the servitudes which the unworthy heir has constituted, may be revoked, when they were the effect of a fraudulent agreement between him and the third persons with whom he has contracted.

## **TITLE II. OF THE ACCEPTANCE AND REPUDIATION OF THE INHERITANCE.**

**3345** [3311]. Future inheritances cannot be accepted or repudiated. The acceptance or renunciation cannot be made until after the opening of the succession.

**3346** [3312]. A presumptive heir who has accepted or repudiated the succession of a living person, may nevertheless accept or renounce it after the death of such person.

**3347** [3313]. The right to elect between the acceptance and the renunciation of the inheritance is lost after the lapse of twenty years from the time the succession became open.

**3348** [3314]. Third interested parties may demand that the heir accept or repudiate the inheritance within a term not exceeding thirty days, without prejudice to the provisions relating to the benefit of inventory.

**3349** [3315]. A failure to renounce the succession cannot be set up against a relative who proves that through ignorance, either of the death of the deceased or of the renunciation by the relative entitled to the succession, he has permitted the said period of twenty years to elapse.

**3350** [3316]. Any person having the right to accept or repudiate an inheritance transmits to his successors the right of option which he had. If there are a number of coheirs, it may be accepted by some of them and repudiated by the

others; but those accepting it must do so as to the entire succession.

**3351** [3317]. The acceptance or renunciation, whether pure and simple, or under the benefit of inventory, cannot be made subject to a term, nor under a condition, nor as to a part of the inheritance only. An acceptance or renunciation subject to a term and only as to a part of the inheritance, is equivalent to a full acceptance. An acceptance subject to a condition is considered as not having been made.

**3352** [3318]. With regard to coheirs, the renunciation of the succession may be conditional or with reservations.

**3353** [3319]. A pure and simple acceptance may be express or implied. It is express when made by a public or private instrument, or when the title of heir is assumed in an act, whether public or private, judicial or extrajudicial, manifesting a certain intention of being the heir. It is implied when the heir performs a juridical act which he could not legally perform except as the owner of the inheritance.

**3354** [3320]. If the presumptive heir has performed an act which he believed or could believe he had a right to perform in a capacity other than in that of an heir, it shall not be held that he has impliedly accepted the inheritance, even though he may actually not have had the right to perform the act except as an heir.

**3355** [3321]. The presumptive heir performs acts of heirship which imply the acceptance of the inheritance, when he disposes under an onerous or lucrative title of a movable or immovable belonging to the inheritance, or when he constitutes a mortgage, a servitude, or some other real right in the immovable property of the succession.

**3356** [3322]. The assignment of the rights of succession by one of the heirs either to a stranger or to his coheirs, is equivalent to the acceptance of the inheritance. A renunciation, even though gratuitous, or in consideration of a price, for the benefit of the coheirs, is also equivalent to the acceptance of the inheritance.

**3357** [3323]. The presumptive heir performs an act of ownership of the succession, and accepts it impliedly, when he

brings an action against his coheirs for the public sale or partition of the succession to which he is called, or when he brings an action against the holders of property belonging to the succession for its return thereto, or when he exercises any right whatsoever which pertains to the succession.

**3358** [3324]. When the presumptive heir compromises or submits to arbitration an action in which the succession is interested, he performs an act of heirship, and the act is equivalent to the acceptance of the inheritance.

**3359** [3325]. There is also an implied acceptance of the inheritance when the heir makes answer to a suit relating to the succession, brought against him as the heir.

**3360** [3326]. The presumptive heir who demands or receives what is owing the succession, performs an act of heirship. And likewise if he pays with funds belonging to the succession a debt, legacy or charge upon the inheritance.

**3361** [3327]. The presumptive heir performs an act of acceptance of the inheritance when he enters upon the possession of the property of the succession; when he leases it or collects the income therefrom; when he makes repairs which are not necessary or of an urgent character; when he cuts timber on the lands; when he changes the surface of the soil of the estate, or the forms of buildings and, in general, when he administers as the owner of the property.

**3362** [3328]. Acts which tend solely to the preservation, supervision or provisional administration of the hereditary property, are not equivalent to an implied acceptance, if the title or the quality of heir has not been assumed.

**3363** [3329]. In all cases of implied acceptance, the succession is considered as having been accepted purely and simply.

**3364** [3330]. The acceptance, whether express or implied, may be made through a mandatary appointed in writing or verbally.

**3365** [3331]. A person who has not yet accepted or repudiated the inheritance, and has concealed or abstracted some of the hereditary things, when he has other coheirs, is considered as having accepted the inheritance.

**3366** [3332]. A person who has been declared the heir at the instance of one having some interest in the succession, as a legatee or creditor, shall be so considered as to the other creditors or legatees, without the necessity of further proceedings.

**3367** [3333]. All persons having the free administration of their property may accept or repudiate a succession. An inheritance falling to persons incapable of binding themselves or waiving their right, cannot be accepted or repudiated, except under the conditions and in the forms prescribed by the law for supplying their incapacity.

**3368** [3334]. A married woman cannot accept or repudiate the inheritance except with the permission of her husband, and in default thereof, that of the judge. In any case she cannot accept without the benefit of inventory.

**3369** [3335]. An action for the annulment of the acceptance, whether pure and simple, or with the benefit of inventory, cannot be brought, and the nullity must not be declared unless the acceptance has taken place without the observance of the formalities, or without the fulfillment of the conditions prescribed for supplying the incapacity of the heir in whose name the inheritance is accepted.

**3370** [3336]. An action for the annulment of the acceptance may be brought, when it was obtained by the *dolus* of one of the coheirs, of a creditor of the inheritance, or of a third person.

**3371** [3337]. An action for the annulment of the acceptance may also be brought when it was the result of fear or violence brought to bear upon the acceptor.

**3372** [3338]. An action for the annulment of the acceptance may also be brought when the inheritance is reduced by more than one-half by the dispositions of a testament the existence of which was unknown at the time of the acceptance.

**3373** [3339]. The annulment of the acceptance in the cases stated may be demanded both by the acceptor himself and by his creditors on his behalf.

**3374** [3340]. The creditors of the heir may, in the event of the heir having accepted an evidently bad succession

through a fraudulent connivance with the hereditary creditors, bring a revocatory action <sup>4</sup> in their own name to obtain the retraction of the acceptance.

**3375 [3341].** A pure and simple acceptance is equivalent to an irrevocable waiver of the power to repudiate the inheritance or to accept it with the benefit of inventory, and its effect is retroactive to the date of the opening of the succession.

**3376 [3342].** The acceptance of the inheritance brings about a definitive confusion of the inheritance with the patrimony <sup>5</sup> of the heir; and it carries with it the extinguishment of his debts or credits in favor of or against the deceased, and also the extinguishment of the real rights with which his property was burdened in favor of the deceased, or which he had in the latter's property.

**3377 [3343].** The heir who has accepted the inheritance is bound, with respect to his coheirs as well as the creditors and legatees, to the payment of the debts and charges of the inheritance, not only with the hereditary property, but also with his own property.

**3378 [3344].** Upon the acceptance of the inheritance, the ownership thereof becomes vested in the person of the acceptor, from the date of the opening of the succession.

**3379 [3345].** The renunciation of an inheritance is not presumed. In order for it to be valid as to the creditors and legatees, it must be express and reduced to a public instrument in the domicile of the person making the renunciation or in that of the deceased, when the renunciation amounts to one thousand *pesos*.

**3380 [3346].** A renunciation made in a private instrument is valid and effective among the coheirs.

**3381 [3347].** A renunciation made in a public instrument is irrevocable. That made in a private instrument cannot be set up by the coheirs against the person who makes it, unless it has been accepted by them.

**3382 [3348].** The heir may accept the inheritance at any

<sup>4</sup> See Art. 2792 [2758].

<sup>5</sup> See note to Art. 3317 [3283].

time before its acceptance by the other heirs or by those called to the succession, without prejudice to the rights which third persons have acquired in the property of the succession, either by prescription, or by valid acts, entered into with the curator of a vacant inheritance<sup>6</sup>; but he cannot accept it when it has already been accepted by the coheirs, or by those called to the succession, whether their acceptance be pure and simple, or with the benefit of inventory, and whether subsequent or prior to the renunciation.

**3383 [3349].** Among the persons entitled to the succession, the renunciation is not subject to any special formality. It may be made and accepted in any kind of public or private instrument.

**3384 [3350].** The person making the renunciation is authorized to bring an action at any time within five years to have his renunciation set aside, in the following cases:

1. When it was made without the formalities prescribed to supply the incapacity of the renouncing party in whose name it was made.

2. When it was the result of *dolus* or violence brought to bear upon the party who made it.

3. When through error, the renunciation was made of an inheritance other than that which the heir understood he was renouncing.

No other error can be pleaded.

**3385 [3351].** The creditors of the person renouncing the inheritance whose claims antedate the renunciation, and any interested person, may bring an action to set aside the renunciation made to their detriment, and to obtain authority to exercise the rights of succession of the person making the renunciation to the extent of their claims.

**3386 [3352].** The creditors authorized to exercise the rights of succession of their debtor are not heirs of the deceased and cannot be sued by the creditors of the inheritance. Everything remaining of the share of the renouncing heir, or of the inheritance itself, after payment of the creditors of the

<sup>6</sup>See Art. 3573 [3539].

through a fraudulent connivance with the hereditary creditors, bring a revocatory action <sup>4</sup> in their own name to obtain the retraction of the acceptance.

**3375 [3341].** A pure and simple acceptance is equivalent to an irrevocable waiver of the power to repudiate the inheritance or to accept it with the benefit of inventory, and its effect is retroactive to the date of the opening of the succession.

**3376 [3342].** The acceptance of the inheritance brings about a definitive confusion of the inheritance with the patrimony <sup>5</sup> of the heir; and it carries with it the extinguishment of his debts or credits in favor of or against the deceased, and also the extinguishment of the real rights with which his property was burdened in favor of the deceased, or which he had in the latter's property.

**3377 [3343].** The heir who has accepted the inheritance is bound, with respect to his coheirs as well as the creditors and legatees, to the payment of the debts and charges of the inheritance, not only with the hereditary property, but also with his own property.

**3378 [3344].** Upon the acceptance of the inheritance, the ownership thereof becomes vested in the person of the acceptor, from the date of the opening of the succession.

**3379 [3345].** The renunciation of an inheritance is not presumed. In order for it to be valid as to the creditors and legatees, it must be express and reduced to a public instrument in the domicile of the person making the renunciation or in that of the deceased, when the renunciation amounts to one thousand *pesos*.

**3380 [3346].** A renunciation made in a private instrument is valid and effective among the coheirs.

**3381 [3347].** A renunciation made in a public instrument is irrevocable. That made in a private instrument cannot be set up by the coheirs against the person who makes it, unless it has been accepted by them.

**3382 [3348].** The heir may accept the inheritance at any

<sup>4</sup> See Art. 2792 [2758].

<sup>5</sup> See note to Art. 3317 [3283]

time before its acceptance by the other heirs or by those called to the succession, without prejudice to the rights which third persons have acquired in the property of the succession, either by prescription, or by valid acts, entered into with the curator of a vacant inheritance<sup>6</sup>; but he cannot accept it when it has already been accepted by the coheirs, or by those called to the succession, whether their acceptance be pure and simple, or with the benefit of inventory, and whether subsequent or prior to the renunciation.

**3383 [3349].** Among the persons entitled to the succession, the renunciation is not subject to any special formality. It may be made and accepted in any kind of public or private instrument.

**3384 [3350].** The person making the renunciation is authorized to bring an action at any time within five years to have his renunciation set aside, in the following cases:

1. When it was made without the formalities prescribed to supply the incapacity of the renouncing party in whose name it was made.

2. When it was the result of *dolus* or violence brought to bear upon the party who made it.

3. When through error, the renunciation was made of an inheritance other than that which the heir understood he was renouncing.

No other error can be pleaded.

**3385 [3351].** The creditors of the person renouncing the inheritance whose claims antedate the renunciation, and any interested person, may bring an action to set aside the renunciation made to their detriment, and to obtain authority to exercise the rights of succession of the person making the renunciation to the extent of their claims.

**3386 [3352].** The creditors authorized to exercise the rights of succession of their debtor are not heirs of the deceased and cannot be sued by the creditors of the inheritance. Everything remaining of the share of the renouncing heir, or of the inheritance itself, after payment of the creditors of the

<sup>6</sup> See Art. 3573 [3539].



heir, belongs to his coheirs, or to the heirs in the next succeeding degree. Neither can demand of the renouncing heir the reimbursement of the sums or amounts paid to his creditors.

**3387** [3353]. The heir making the renunciation shall be considered as never having been an heir; and the succession is offered as if the renouncing heir had never existed.

**3388** [3354]. Heirs having a *légitime* in the succession may repudiate the inheritance, without prejudice to taking the *légitime* to which they are entitled.

**3389** [3355]. The heir who renounced the succession may retain any donation *inter vivos* made to him by the testator and claim the legacy which he has left him, if it does not exceed the portion of which the law allows the testator to dispose.

**3390** [3356]. An heir who renounces a succession cannot release himself from returning the sums which he owes the inheritance. Payment thereof may be demanded of him, not only by the other coheirs, but even by the creditors, heirs and legatees.

### TITLE III. OF THE ACCEPTANCE OF THE INHERITANCE WITH THE BENEFIT OF INVENTORY.

**3391** [3357]. No action can be brought against the heir to compel him to accept or repudiate an inheritance until nine days have passed since the death of the person whose succession is involved. The judges may, in the meantime, at the instance of the persons interested, adopt the measures necessary to safeguard the property.

**3392** [3358]. Any universal successor, whether legal or testamentary, may accept the inheritance with the benefit of inventory against all the hereditary creditors and legatees, and against those persons in whose favor charges have been imposed upon the succession.

**3393** [3359]. A universal successor cannot accept the inheritance with the benefit of inventory, when he has performed an act of pure and simple heirship.

**3394** [3360]. When there are a number of heirs, the benefit of inventory is granted separately or individually to each of them. One of them may accept the succession with the benefit of inventory, while another may accept it purely and simply.

**3395** [3361]. The acceptance of the succession by one of the heirs with the benefit of inventory, does not modify the effects of pure and simple acceptance by the others, and *vice versa*. The rights and obligations of each of the heirs are always the same, both with respect to them as with respect to the creditors and legatees.

**3396** [3362]. The testator cannot order the heir, whether legitimate or otherwise, to accept the succession without the benefit of inventory.

**3397** [3363]. Acceptance under the benefit of inventory is not presumed: it must be express. An heir who desires to accept an inheritance under the benefit of inventory, must so state within a term of ten days, before the judge having jurisdiction of the succession. Any other declaration has no effect whatsoever, even though it be contained in an authentic act.

**3398** [3364]. Even when the succession falls to a minor or incapacitated person, the tutor or curator must make the declaration referred to in the preceding article, and if he fails to do so, he must compensate the creditors of the succession for any damages which his omission has caused them.

**3399** [3365]. The heir does not lose the right to ownership of the inheritance by his acceptance under the benefit of inventory. He preserves all the rights of the heir; he is subject to all the obligations which the quality of heir imposes upon him, and transmits to his universal successors the inheritance he has received, with the rights and obligations of his acceptance under the benefit of inventory.

**3400** [3366]. An heir has three months from the date of the opening of the succession, or from the time he knew that the succession had been offered to him, to make the inventory, and thirty days to deliberate over the acceptance or repudiation of the inheritance. The latter term runs from the date

of the expiration of the three months allowed for making the inventory; and if the inventory is concluded before the expiration of the three months, from the date of its conclusion.

**3401** [3367]. During these periods the creditors and legatees cannot bring any action for the recovery of their credits and legacies; but the heir may collect the hereditary credits. Actions of ownership against the succession may be instituted during the periods designated in the preceding article.

**3402** [3368]. If on account of the situation of the property or other causes it has not been possible to terminate the inventory, the judges may grant the extensions which are indispensable, with the same effects as the terms prescribed by law.

**3403** [3369]. During the terms allowed for making the inventory and deliberating, the heir cannot sell either the real or the movable property without authorization from the judge, unless he and a majority of the legatees agree otherwise.

**3404** [3370]. The inventory must be made before a notary and two witnesses, with the citation of the legatees and creditors who have appeared.

## CHAPTER I.

### Of the Rights and Duties of the Beneficiary Heir.

**3405** [3371]. An heir who accepts the inheritance under the benefit of inventory, is bound for the debts and charges of the succession only to the extent of the value of the property he has received from the inheritance. His patrimony<sup>7</sup> is not confounded with that of the deceased, and he may claim as any other creditor the credits he has against the succession.

**3406** [3372]. He is not bound with the property which the person leaving the succession gave him during his life-

<sup>7</sup> See note to Art. 3317 [3283].

time, even when he is required to collate it among his coheirs, nor with the property which the deceased gave during his lifetime to his coheirs and which he has the right to have collated.

**3407** [3373]. The acceptance of an inheritance with the benefit of inventory prevents the extinction by confusion of the rights of the heir against the succession; and *vice versa*, of the rights of the succession against the heir. The latter preserves, as a third person, all his personal and real rights against the succession, and the succession preserves against him all its personal and real rights.

**3408** [3374]. The heir is subrogated to the rights of the creditor or legatee whom he has paid with his own money.

**3409** [3375]. He may revendicate from a third grantee things belonging to him which have been alienated by the deceased.

**3410** [3376]. The third personal debtors of the beneficiary heir cannot set up in compensation against him the credits which they have against the succession.

**3411** [3377]. The actions which the beneficiary heir desires to bring against the succession shall be directed against all of the heirs, if there are any. If sought to be instituted by all of the coheirs, the judge shall appoint a curator for the succession; but the appointment of a curator does not lie if the succession accepted is that of a bankrupt.

**3412** [3378]. The actions of the succession against the beneficiary heir may be brought by the other coheirs. If there are none, the payment of the debts of the heir shall be made in the accounts which he presents of his administration.

**3413** [3379]. The beneficiary heir may release himself from the payment of the debts and legacies by abandoning all the property of the succession to the creditors and legatees. This abandonment does not imply a renunciation of the succession; the beneficiary heir is obliged to collate in the account of the partition with the coheirs the value of the property which the deceased donated to him during his lifetime; and he may demand the value of the donations made to the coheirs in all cases in which the collation of property is ordered.

**3414 [3380].** After the abandonment of the property of the succession by the beneficiary heir, it can be sold only in the form prescribed for such heir.

**3415 [3381].** After the creditors and legatees have been paid, they must return the remaining property to the beneficiary heir.

## CHAPTER II.

### Of the Administration of the Property of the Inheritance.

**3416 [3382].** A beneficiary heir who does not abandon the property must administer the succession and render an accounting of his administration to the creditors and legatees.

**3417 [3383].** His management extends to all the affairs of the inheritance, both actively and passively. He must institute and prosecute all the actions of the succession, and continue those which had been suspended, interrupt the course of prescriptions, and adopt all the measures necessary to provide against the insolvency of the debtors. He must contest all actions brought against the succession.

He has the right to receive all the sums due the succession, and may pay the lawful debts and charges against the succession.

He has the right to make all urgent repairs to the property of the succession, or those necessary for the preservation of the objects of which the inheritance consists.

He is the sole representative of the succession.

He cannot submit to arbitration or compromise matters in which the succession is interested.

**3418 [3384].** He is liable for gross negligence in his administration; and even though the credits absorb the entire inheritance, he cannot demand any commission whatsoever for his administration, even though the succession be abandoned to the creditors and legatees.

**3419 [3385].** If his administration is culpable, or prejudices the hereditary interests through any other cause per-

sonal to the heir, the creditors and legatees may require him to give security to cover the amount of the damage which his administration may be causing them; and if the heir does not give it, the movables shall be sold and the proceeds thereof deposited, as well as that part of the proceeds which is not applied to the payment of the mortgage credits.

**3420** [3386]. The cost of making the inventory, the administration of the hereditary property, or the care thereof, ordered by the judge upon the rendition of accounts by the heir, are chargeable to the inheritance; and if the heir has paid these expenses from his own funds, he shall be reimbursed, enjoying a privilege <sup>8</sup> on all the property of the succession.

**3421** [3387]. The beneficiary heir is not authorized to include in the expenses the sums which were owing him by the deceased, nor the debts of the succession which he has paid from his funds. If the property of the succession is insufficient to pay the debts, the heir is liable for a proportionate loss, and cannot take from the succession the sums owing him as the creditor of the deceased, or as subrogated to the rights of other creditors.

**3422** [3388]. The beneficiary heir has the free administration of the property of the succession and may apply the revenues and products thereof as he deems fit.

**3423** [3389]. He can neither accept nor repudiate an inheritance which had been offered to the person leaving the succession, without the permission of the judge, and if the judge gives such permission he must do so with the benefit of inventory.

**3424** [3390]. He cannot encumber the hereditary property with mortgages or other real rights, nor enter into compromises in regard thereto, nor submit to arbitration the affairs of the testamentary succession, without being authorized therefor by the judge who has jurisdiction of the succession.

**3425** [3391]. The beneficiary heir is not obliged to sell either the movable or the immovable property of the succession, and may discharge the credits in any other manner that may suit him.

<sup>8</sup> See Art. 3909.

**3426** [3392]. He cannot offer the creditors and legatees the appraised value of the movables or immovables; nor do the creditors and legatees have the right to take them at their valuation.

**3427** [3393]. He may alienate the movables which cannot be kept and those which the deceased had for sale; but he can not do so with property of any other kind without judicial permission. The sale of the immovables can be effected at public auction only.

**3428** [3394]. The purchaser of immovable property subject to mortgages, who pays the entire price to the beneficiary heir to the prejudice of the creditors, does not release the mortgaged immovable subject to the encumbrance.

**3429** [3395]. The acts of alienation and of disposition of the property by the beneficiary heir, as owner thereof, are valid and irrevocable.

### CHAPTER III.

#### Of the Payment of Creditors and Legatees.

**3430** [3396]. If there are privileged or mortgage creditors, the proceeds of the sale of the immovables shall be distributed according to the order of privileges or mortgages prescribed in this Code.

**3431** [3397]. If the creditors, whether mortgage or chirograph,<sup>9</sup> object to the payment of some mortgage credit, the heir shall make the payment in conformity with the decision of the judges.

**3432** [3398]. If there be no objecting creditors, the heir must pay the creditors and legatees as they present themselves. The creditors who present themselves when there is no longer any property of the succession left, have only a remedy for three years against the legatees for what the latter have received. The heir may pay himself.

<sup>9</sup> See note 21, p. 155.

**3433** [3399]. The objections must be made by each creditor individually, on his own particular account. The objection made by one of them does not benefit any person who has not made it.

**3434** [3400]. The legatees cannot claim payment until after the creditors have been paid in full.

**3435** [3401]. Nor can they object to the payment of the credits; but they may object to the payment of the legacies, in order that the sum on hand may be distributed among the legatees themselves as a necessary contribution.

**3436** [3402]. If the beneficiary heir has made payments notwithstanding one or more objections, he is personally liable for any damage he causes the creditor or legatee.

**3437** [3403]. In the case of the preceding article, the creditors may direct their action against the heir for the reparation of the damage which they have sustained, without the necessity of proving the insolvency of the creditors paid; or against the creditors paid, without the necessity of proving the insolvency of the heir.

## CHAPTER IV.

### Of the Termination of the Benefit of Inventory.

**3438** [3404]. The benefit of inventory terminates by the express waiver thereof by the heir in a public or private document.

**3439** [3405]. The benefit of inventory terminates also if the heir conceals anything of value belonging to the succession, or if he fraudulently omits from the inventory some things belonging to the inheritance.

**3440** [3406]. An heir loses the benefit of inventory when he sells the immovable property of the succession without observing the provisions prescribed. With regard to the movables, the judges shall decide in their discretion whether the alienation thereof was or was not an act of good administration.



**3441** [3407]. The alienation by the heir, under a gratuitous title, of the property of the succession, the delivery of hereditary property in payment, and the constitution of servitudes upon the immovables of the succession, entail the loss of the benefit of inventory; but the constitution of a mortgage thereon does not.

**3442** [3408]. Upon the termination of the benefit of inventory the heir is considered as a pure and simple heir since the opening of the succession.

**3443** [3409]. In the case of the preceding article, the creditors of the deceased become the personal creditors of the heir, and the latter may cause the property of the succession to be attached and sold, without the creditors of the deceased having the right to claim any preference over them.

## TITLE IV. OF THE RIGHTS AND OBLIGATIONS OF THE HEIR.

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### CHAPTER I.

#### Rights of the Heir.

**3444** [3410]. When the succession lies between ascendants and descendants, the heir enters into the possession of the inheritance the day of the death of the person leaving the succession, without any formality or the intervention of the judges, even when he is unaware of the opening of the succession and his call to the inheritance.

**3445** [3411]. If at the time of the death of the person who leaves the succession, his legitimate heirs, whether descendants or ascendants, are without the Republic, or without the province in which the property is situated, they must, in order to take possession of the inheritance, request such possession of the judge of the district, establishing the death of the person who leaves the succession and their right to the inheritance.

**3446** [3412]. The other relatives called to the succession by the law, the spouses, the natural children and parents, cannot take possession of the inheritance without demanding it of the judges and establishing their right to the succession.

**3447** [3413]. Those instituted in a testament having no defect, must likewise apply to the judge for the hereditary possession, and present the testament wherein they were instituted heirs. Any opposition to their claims must be summarily tried.

**3448** [3414]. The heirs who are required to demand judicial possession of the inheritance cannot exercise any of the actions subordinate to the succession, nor bring suit against the debtors, nor against the illegal holders of the hereditary property before it is granted. They cannot be sued by the hereditary creditors or other persons interested in the succession.

**3449** [3415]. The judicial possession of the inheritance having been granted, it has the same effects as the hereditary possession of descendants or ascendants, and the heirs are considered to have succeeded to the deceased immediately without any interval of time, and with retroactive effect to the day of the death of the person leaving the succession.

**3450** [3416]. When a number of persons are called simultaneously to the succession, each of them has the rights of the deceased in an indivisible manner, both as to the ownership and the possession.

**3451** [3417]. The heir who has entered into possession of the inheritance, or who has been placed therein by a judge of competent jurisdiction, continues the person of the deceased, and is the owner, creditor or debtor of all of which the deceased was the owner, creditor or debtor, with the exception of those rights which are not transmissible by succession. The fruits and products of the inheritance belong to him. The eventual rights which may correspond to the deceased are also transmitted to the heir.

**3452** [3418]. The heir succeeds not only to the ownership, but also to the possession of the deceased. The possession held by the latter is transferred with all its advantages and its vices.

The heir may exercise the possessory actions of the deceased, even before having taken actual possession of the hereditary property, without being obliged to produce other proof than that which could be demanded of the deceased.

**3453** [3419]. An heir who survives the deceased a single instant transmits the inheritance to his own heirs, who enjoy the power to accept or renounce it as he did.

**3454** [3420]. The heir, even though incapable, or unaware of the fact that the inheritance has been offered to him, is nevertheless the owner thereof from the moment of the death of the person leaving the succession.

**3455** [3421]. The heir may enforce his rights by an action of petition of inheritance, to obtain the delivery to him of all the objects of which it consists, or by a possessory action, to be maintained in or restored to possession of the inheritance, or by the possessory or petitory actions which the person leaving the succession could have brought if living.

**3456** [3422]. The heir has a right of action for the recovery of the hereditary things possessed by others as the universal successors of the deceased, or from the persons who have possession thereof, with the increases which the inheritance has had; and also for the delivery to him of those things of which the deceased had the mere tenancy, as depositary, the borrower in commodatum, etc., and which he did not lawfully return to their owners.

**3457** [3423]. An action of petition of inheritance lies against a relative in a more remote degree who has entered into the possession thereof owing to the absence or non-action of nearer relatives; or against a relative in the same degree, who refuses to recognize his condition as heir or who claims to have been called also to the succession in participation with him.

**3458** [3424]. In the case of non-action on the part of a legal or testamentary heir, said action lies in behalf of the relatives in successible degree, and the person who brings it cannot be repelled by the holder of the inheritance on the ground that there are other nearer relatives.

**3459** [3425]. The holder of the inheritance must deliver it to the heir with all the hereditary objects in his possession, and with the accessions and improvements which they have received, even though by the act of the possessor.

**3460** [3426]. The holder in good faith of the inheritance does not owe any indemnity on account of the loss of or damage caused by him to the hereditary things, unless he has benefited from the damage; and in such case only to the extent of the benefit he has received. A holder in bad faith is obliged to repair any damage caused through an act of his. He also is obliged to answer for the loss or deterioration of the hereditary objects due to a fortuitous event, unless the loss or deterioration would likewise have occurred if said objects had been in the possession of the heir.

**3461** [3427]. As to the fruits of the inheritance and the improvements added to the hereditary things, the provisions relating to possessors in good or bad faith shall be observed.

**3462** [3428]. The possessor of an inheritance is in good faith when by an error of fact or of law he believes himself to be the lawful owner of the succession of which he is in possession. More remote relatives who take possession of the inheritance owing to the non-action of a nearer relative, are not in bad faith on account of having knowledge of the fact that the estate has been offered to the latter. But they are in bad faith when, knowing of the existence of the nearer relative, they know that he has not appeared to lay claim to the succession because he is unaware of the fact that it has been offered to him.

## CHAPTER II.

### Of the Obligations of the Heir.

**3463** [3429]. The heir is obliged to respect the acts of administration of the possessor of the inheritance in favor of third persons, whether the possessor be in good or bad faith.

**3464** [3430]. The acts of conveyance of immovable property under an onerous title by the possessor of the inheritance, whether or not in good faith, are likewise valid with respect to the heir, when the possessor is a relative of the deceased in a successible degree and has taken the inheritance as such, owing to the absence or non-action of the nearer relatives, and when the public and peaceful possession of the inheritance has caused him to be considered the heir, provided the third party with whom he entered into the contract acted in good faith. If the possessor of the inheritance acted in good faith, he is required to return only the price paid him. If he acted in bad faith, he must indemnify the heirs for any damages caused them by the conveyance.

**3465** [3431]. The heir must comply with the obligations which encumber the person and the estate of the deceased, and those arising out of the transmission of said estate itself, or which the deceased has imposed upon the heir as such.

**3466** [3432]. The creditors of the inheritance enjoy the same means of execution against the heir, and the instruments upon which execution may issue against the deceased grant a similar right against the heir.

## **TITLE V. OF THE SEPARATION OF THE ESTATES OF THE DECEASED AND OF THE HEIR.**

**3467** [3433]. Any creditor of the succession, whether a privileged or a mortgage creditor, or subject to a term or condition, or for a life annuity, whether his title be under private signature or appear in a public instrument, may bring an action against any creditor of the heir, however privileged his credit may be, for the preparation of an inventory and the separation of the property of the inheritance from that of the heir, in order to recover payment from the property of the succession before the creditors of the heir. The inventory must be made at the cost of the creditor who demands it.

**3468** [3434]. The creditors of the succession may bring an action for the separation of the estates, even when their

credits are not demandable at the time or are eventual or subject to uncertain conditions; but the personal creditors of the heirs may be paid from the hereditary property upon giving security to return whatever they receive, if the condition is fulfilled in favor of the creditor of the succession.

**3469** [3435]. A creditor who is the heir of the deceased as to a part of the inheritance only, may bring an action for the separation of the estates.

**3470** [3436]. The legatees also have a right to bring an action for the separation of the estates, in order to recover payment from the estate of the deceased before the personal creditors of the heir.

**3471** [3437]. The creditors of the heir cannot demand the separation of the estates against the creditors of the succession.

**3472** [3438]. An action for the separation of the estates may be brought collectively against all the creditors of the heir, or individually against one or more of them, or collectively against the entire inheritance, or with respect to each of the properties of which it consists.

**3473** [3439]. The separation of estates applies to the natural and civil fruits which the hereditary property has produced since the death of the person who leaves the succession, provided their origin and identity are duly established.

**3474** [3440]. If the heir alienated the immovables or movables of the succession before the action for the separation of estates, the right to bring an action to recover them cannot be exercised with respect to the property alienated the price of which has been paid. But the separation of estates may be applied to the price of the property sold by the heir, when still owing by the purchaser; and to the property acquired in the place of other property of the succession, when the origin and identity thereof are established.

**3475** [3441]. The separation of estates can be applied only to the property which belonged to the deceased, and not to the property which he gave the heir during his lifetime, even when the latter is required to collate it in the partition with his coheirs; nor to the property derived from an action to reduce the amount of a donation *inter vivos*.

**3476 [3442].** The separation of estates does not apply to the movables of the inheritance which have become confused with the movables of the heir in such manner as to render it impossible to recognize and distinguish them from each other.

**3477 [3443].** An action for the separation of estates may be brought as long as the property is in the possession of the heir, or of the heir of the latter. The creditors and legatees may demand the adoption of all measures necessary to protect their rights before bringing an action for the separation of the estates.

**3478 [3444].** An action for the separation of estates may be brought in all cases in which the rights of the creditors would be furthered thereby. The creditors may sue for the separation of the estate of the surety from that of the debtor, when the debtor has inherited from the surety; and if the surety has inherited from the debtor, the creditors may bring an action for the separation of the estate of the debtor from that of the surety.

**3479 [3445].** The separation of the estates creates in favor of the creditors of the deceased a right of preference in the hereditary property, outranking all creditors of the heir of any class whatsoever.

**3480 [3446].** The creditors and legatees who have brought an action for the separation of estates, preserve the right to participate with the particular creditors of the heir in proceedings against his personal property, and even to outrank them if the class of their credits give them the preference. And the creditors of the heir retain their rights to the remainder of the property of the succession, after payment of the credits of the deceased.

**3481 [3447].** The right of the creditors of the succession to bring an action for the separation of the estates cannot be exercised when they have accepted the heir as debtor, and have relinquished the titles conferred by the deceased.

**3482 [3448].** The acceptance from the heir by a creditor of the interest due on his credit is not to be considered as an acceptance of the heir as a debtor.

**TITLE VI. OF THE DIVISION OF THE INHERITANCE.**

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**CHAPTER I.****Of the State of Indivision.**

**3483** [3449]. If there are a number of heirs of a succession, the possession of the inheritance by any one of them benefits the others.

**3484** [3450]. Each heir in a state of indivision may bring an action of revendication<sup>10</sup> against the third holders of the immovables of the inheritance, and exercise to the extent of his interest all actions the purpose of which is to protect his rights in the hereditary property, subject, however, to the result of the partition.

**3485** [3451]. None of the heirs has the power to administer the interests of the succession. The resolutions and acts of the majority do not bind the other coheirs who have not agreed thereto. In such cases the judge shall settle the differences between the heirs regarding the administration of the succession.

**3486** [3452]. The heirs, their creditors, and all persons who have some interest in the succession declared by the laws, may at any time demand the partition of the inheritance, notwithstanding any prohibition of the testator, or agreements to the contrary.

**3487** [3453]. Even when a part of the hereditary property is not susceptible of immediate division, an action for the partition of that which can be divided at the time may be brought.

**3488** [3454]. Tutors or curators interested in the succession, parents for their children, the husband for his wife and the wife herself with authorization from the husband or the judge, may demand a partition and agree to that demanded by others.

<sup>10</sup> See Art. 2792 [2758].



**3489** [3455]. If the tutor or curator is the tutor or curator of a number of incapacitated persons who have conflicting interests in the partition, a tutor or curator must be appointed for each to represent him in the partition.

**3490** [3456]. A curator shall be appointed for emancipated minors, either to bring an action for partition, or to make answer to that brought against them.

**3491** [3457]. If there are absent coheirs whose death is presumed, the action for partition may be brought by the relatives to whom possession of the property of the absentee has been given. If the absence is presumed only, without the absentee having appointed a representative, the judge shall appoint a person to represent him, if it is not possible to cite him.

**3492** [3458]. Conditional heirs cannot demand the partition of the inheritance until the condition is fulfilled; but the other coheirs may demand it upon giving security for the interest of the conditional heir. The partition is considered as provisional until it becomes known whether the condition has been fulfilled or not.

**3493** [3459]. If one of the coheirs dies before the partition is made, leaving a number of heirs, it shall be sufficient that one of said heirs demand the partition: but if all of them do so, or seek to participate in the division of the inheritance, they must be represented by a single person.

**3494** [3460]. The action for the partition of an inheritance is not subject to prescription as long as the indivision continues; but it is susceptible to prescription when the indivision has actually ceased because one of the heirs, acting as the sole owner, has commenced to possess it in an exclusive manner. In such case prescription takes place thirty years after the beginning of the possession.

**3495** [3461]. When the possession referred to in the foregoing article has been only of an aliquot part of the inheritance, or of individual objects, the action for partition prescribes after thirty years with respect to such part or objects, and continues as to the parts or objects which have not been so possessed.

## CHAPTER II.

### Of the Different Modes in which the Partition of the Inheritance may be Made.

**3496** [3462]. If all the heirs are present and of full age, the partition may be made in the form and by the instrument which the persons interested or a majority thereof, counted by persons, deem advisable, provided their decision be not opposed to the very essence of the partition.

**3497** [3463]. If any of the heirs are absent, they shall be cited to appear within the time which the judge may determine, and if they fail to appear counsel shall be appointed to represent them.

**3498** [3464]. The partition shall be considered merely provisional when the heirs have made a division of the enjoyment or use of the hereditary things only, continuing the indivision as to the ownership. Such a partition, under whatever clauses made, is not a bar to an action for definitive partition sought by any of the heirs.

**3499** [3465]. Partitions must be judicial:

1. When minors, even though emancipated, or incapacitated persons are interested therein; or absentees whose existence is uncertain.

2. When third persons, basing their action on a juridical interest, object to a private partition.

3. When the heirs of full age who are present do not agree to a private division.

**3500** [3466]. The appraisal of the hereditary property in judicial partitions shall be made by experts appointed by the parties. The judge may order another particular or general appraisal when any of the heirs shows that the appraisal does not agree with the value of the property.

**3501** [3467]. Each of the heirs has the right to demand the sale of the hereditary property at public auction, offering to take it for an amount greater than that at which it was

appraised; and in such case it shall be allotted to him for the amount offered by the highest bidder. This right cannot be exercised when the heirs, knowing of the appraisal, did not object thereto and the partition had been made according to the appraised value of the property.

**3502 [3468].** The partition of the inheritance shall be made by experts appointed by the parties.

**3503 [3469].** The partitioner must make up the mass of the hereditary property, by gathering the existing things, the credits in favor of the succession, of strangers as well as of the heirs themselves, and whatever each of the latter is required to collate to the inheritance.

**3504 [3470].** In the event of the division of the same succession among foreign and Argentine heirs, or foreign heirs domiciled in the State, such heirs shall take from the property situated in the Republic a portion equal to the value of the property situated in a foreign country from which they are excluded for any reason whatsoever by virtue of the local laws or customs.

**3505 [3471].** The debts in favor of the succession may be allotted to each of the heirs, and the instruments evidencing the credits delivered to them.

**3506 [3472].** The titles of acquisition shall be delivered to the coheir to whom the objects to which they refer have been allotted. When the same title comprises a number of objects allotted to a number of heirs, or a single object divided among a number of heirs, the hereditary title shall remain in the possession of the person who has the greatest interest in the object to which the title refers; but the others shall be given authentic copies at the cost of the inheritance.

**3507 [3473].** The titles or things common to the entire inheritance must remain on deposit in possession of the heir or heirs which the persons interested elect. If they do not agree among themselves, the judge shall appoint the heir or heirs who are to have the custody thereof.<sup>11</sup>

<sup>11</sup> The official edition of the Code contains the following note: "We call titles or things common to the inheritance, the honorary titles of the deceased, his correspondence, the manuscripts which he leaves, family portraits, etc."

**3508** [3474]. In the partition, whether judicial or extrajudicial, sufficient property must be set aside for the payment of the debts and charges of the succession.<sup>12</sup>

**3509** [3475]. The creditors of the inheritance, recognized as such, may demand that the hereditary portions of the heirs be withheld from them, and the legacies from the legatees, until their credits have been paid to them.

### CHAPTER III.

#### Of Collation.

**3510** [3476]. (*As amended by the Law of Corrections of the Civil Code, of September 9, 1882.*) Any donation *inter vivos* to a forced heir who participates in the legal succession of the donor, implies simply an advancement on his hereditary portion.

**3511** [3477]. The ascendants and descendants, whether legitimate or natural, who have accepted the inheritance with or without the benefit of inventory, must add to the hereditary mass all things of value given by the deceased during his lifetime.

**3512** [3478]. Collation is owing by a coheir to his coheir: it is not owing either to the legatees or to the creditors of the succession.

**3513** [3479]. The other acts of liberality on the part of the deceased while living, enumerated in Art. **1825** [1791], to persons who have a legal interest in the succession, are not subject to collation.

**3514** [3480]. The costs of support, medical attendance, no matter how extraordinary they are, and education; the expenses incurred by parents in providing tuition for their children, or to prepare them to practice some profession

<sup>12</sup> Note in official edition: "By charges of the succession we understand the obligations which have arisen since the death of the person leaving the inheritance *quæ ab hærede ceperunt* . . . such as the funeral expenses and those connected with the preservation, liquidation and division of the respective interests, the inventories, appraisal, etc."

or engage in some trade, or customary presents, or the payment of debts of ascendants or descendants, or of movable objects constituting gifts of an ordinary character or as a mark of friendship, are not subject to collation.

**3515** [3481]. Parents are not obliged to collate to the inheritance of their ascendants what they have donated to one of their children; nor the husband or wife, what has been donated to his or her spouse by the father or mother-in-law, even though the donor expressly stipulates the contrary.

**3516** [3482]. When the grandchildren succeed the grandfather in representation of the father, participating with their uncles and cousins, they must bring to collation everything which the father, if living, would have been compelled to collate, even though they have not inherited it.

**3517** [3483]. Any legal heir may bring an action to compel collation against the heir required to collate. Such action may also be brought by the hereditary creditors and legatees, when the heir to whom the collation is owing has accepted the succession purely and simply.

**3518** [3484]. Dispensation from bringing to collation may be granted only by the testament of the donor, and within the limits of his disposable portion.

## CHAPTER IV.

### Of the Division of Active and Passive Credits.

**3519** [3485]. The divisible credits which form part of the hereditary assets are divided among the heirs in proportion to the share to which each is called in the inheritance.

**3520** [3486]. Upon the death of the person leaving the succession, each heir is authorized to demand the payment of the credits in favor of the succession to the extent of his hereditary portion.

**3521** [3487]. Any heir may assign his share in each of the credits of the inheritance.

**3522** [3488]. The debtor of a hereditary credit discharges in part his personal debt when he pays to one of the heirs the share of such heir in that credit.

**3523** [3489]. The personal creditors of one of the heirs may attach his share in each of the hereditary credits, and demand that the debtors of said credits be compelled to pay them to the extent of such share.

**3524** [3490]. If the creditors have not been paid, for any reason whatsoever, before the delivery to the heirs of their hereditary portions, the debts of the deceased shall be divided into as many separate fractions as there are heirs, in proportion to the share of each, whether the partition has been made *per capita* or *per stirpes*, and whether the heir be a beneficiary heir or an heir without the benefit of inventory.

**3525** [3491]. Each of the heirs may release himself from all obligations upon paying his part of the debt.

**3526** [3492]. If a judgment is rendered against a number of universal successors as such jointly, judgment shall be considered to have been rendered against each of them only in proportion to his hereditary share.

**3527** [3493]. The demand made by the creditors of the succession upon one of the heirs for payment of the debt, does not interrupt prescription with respect to the others.

**3528** [3494]. The debt of one of the heirs in favor of the succession, as well as the credits he has against it, are not extinguished by confusion beyond the amount of his hereditary portion.

**3529** [3495]. The insolvency of one or more of the heirs does not charge the others, and the solvent heirs cannot be proceeded against on account of the insolvency of their coheirs.

**3530** [3496]. If one of the heirs dies, the portion of the debt personal to him in the division of the inheritance shall be divided in the same manner as all other personal debts, into fractions, among his heirs, in proportion to the share to which each is entitled in the succession of said deceased heir.

**3531** [3497]. If one of the heirs has been charged with the duty of paying the debt under the title whereby it was

constituted or by a subsequent instrument, the creditor authorized to demand payment of him preserves his right of action against the other heirs to recover payment in proportion to their hereditary shares.

**3532 [3498].** Each heir is bound with respect to the creditors of the inheritance for the debt with which it is charged, in proportion to his hereditary share, even though under the partition he has actually received but an amount under said part, without prejudice to his rights against the coheirs.

**3533 [3499].** The legatees of a specified part of the succession are bound to pay the debts in proportion to the amount they receive. The creditors may also demand of them their share of the credit, or direct their action against the heirs only. The heirs have a right of action against the legatees for the proportion in which they are obliged to contribute to the payment of the debts.

**3534 [3500].** The heirs may, in order to avoid the consequences of the insolvency of the legatees, demand of them the immediate payment of the part to be contributed by them to the discharge of the debts of the succession.

**3535 [3501].** The legatees of particular objects or of specified sums of money are liable for the debts of the inheritance only when the property of which it consists is insufficient; and they are then liable to the extent of the value received by them, contributing among themselves in proportion to each legacy.

**3536 [3502].** A coheir who is a creditor of the deceased may demand payment of his credit of the others, after deduction of his proportionate share as such heir.

## CHAPTER V.

### Of the Effects of Partition.

**3537 [3503].** Each heir is considered as having succeeded solely and immediately to the hereditary objects allotted

to him in the partition, and never to have had any right in those allotted to his coheirs; and also that his right to the property allotted to him in the partition is held by him exclusively and immediately of the deceased and not of his coheirs.

**3538** [3504]. If one of the heirs constituted a right of mortgage on an immovable belonging to the succession before the partition, and such immovable is allotted upon the division of the inheritance to another coheir, the right of mortgage is extinguished.

**3539** [3505]. The coheirs are guarantors to each other against any eviction of the objects allotted to them in the partition, and against any disturbance of their right to the peaceful enjoyment of the things themselves or of the active servitudes, when the cause of the eviction<sup>18</sup> or disturbance antedates the partition.

**3540** [3506]. The guaranty of the coheirs is for the value of the thing at the time of the eviction. If the coheirs are not willing to pay this value, they may demand that the partition be made *de novo*, according to the value of the property at the time, even though some of the property has already been alienated.

**3541** [3507]. The provisions of Arts. **2174** [2140] to **2178** [2144] are applicable to the guaranty of the coheirs against eviction, without prejudice to the special provisions of this chapter.

**3542** [3508]. The reciprocal obligation of the coheirs on account of eviction is in proportion to their hereditary share, including the share of the coheir who has suffered the eviction; but if any of them is insolvent the loss shall be equally distributed between the warrantee and the other coheirs.

**3543** [3509]. The coheirs are likewise bound to guarantee to each other not only the existence, on the day of the partition, of the hereditary credits which have been allotted to them, but also the solvency of the debtors of said credits at that time.

<sup>18</sup> See Art. 2123 [2089].



**3544** [3510]. The heirs must guarantee each other against the latent defects of the objects allotted to them, provided such defects reduce the value thereof by one-fourth of their appraised value.

**3545** [3511]. The obligation of the guaranty terminates only when expressly waived at the time of partition, and with respect to a specified case of eviction. A general clause whereby the heirs reciprocally release each other from any obligation of guaranty, is void.

**3546** [3512]. Even when the heir knew at the time of the partition of the danger of the eviction of the object received by him, he has the right to compel the coheirs to make good the guaranty, if the eviction takes place.

**3547** [3513]. An action of guaranty prescribes ten years after the date on which the eviction took place.

## CHAPTER VI.

### Of the Division made by the Father or Mother and other Ascendants, among their Descendants.

**3548** [3514]. The father, mother, and other ascendants may, by a donation *inter vivos* or by testament, make an anticipated division of their own property among their children and descendants, and also, by special acts, of the property which the descendants may obtain from other successions.

**3549** [3515]. Ascendants who appoint tutors to their minor descendants, may authorize them to make the inventories, appraisals and partitions of their property extrajudicially, presenting them afterwards to the judges for their approval.

**3550** [3516]. A partition by donation may be made only by the absolute delivery of the property divided, transferring the ownership thereof irrevocably. This partition requires acceptance by the heirs.

**3551** [3517]. A partition by a donation *inter vivos* cannot be made subject to conditions depending solely on the will

of the donor, nor with the charge of paying other debts than those which the ascendant has at the time he makes it, nor under the reservation of later disposing of the things comprised in the partition.

**3552** [3518]. A partition by donation can include present property only. The property which the ascendant acquired subsequently, and that which was not included in the donation, shall be divided at his death, as provided for ordinary partitions.

**3553** [3519]. When the ascendant makes the partition by a donation *inter vivos*, delivering to the descendants all his present property, the descendants are bound to pay the debts of the ascendant, each to the extent of his share and portion, without affecting the rights of the creditors to the retention of their action against the ascendant.

**3554** [3520]. The liability of the descendants for the debts of the ascendant does not lie when the creditors find in the possession of the ascendant property sufficient to satisfy their credits.

**3555** [3521]. A partition by donation *inter vivos* may be revoked by the action of the creditors of the ascendant, subject solely to the conditions required for the revocation of acts under a gratuitous title.

**3556** [3522]. A partition by donation is irrevocable by the ascendant; but it may be revoked on account of the non-fulfillment of the charges and conditions imposed, or for a cause of ingratitude.

**3557** [3523]. A partition by donation must be made in the forms prescribed for other donations of that class.

**3558** [3524]. Whether the partition be by donation *inter vivos* or by testament, the ascendant may give to one or more of his children the portion of the property of which the law permits him to dispose; but it shall not be understood that he gives them as an advantage<sup>14</sup> the part of which the law

<sup>14</sup> *Mejora*: the advantage which an ascendant grants one or more of his legitimate descendants granting them a larger share of the inheritance than the others; or that part of the property which ascendants leave to one or more of their descendants, in addition to what is due them as their precise and necessary *légitime*. (Escriche, *Diccionario de Legislación y Jurisprudencia*.)

permits him to dispose for this purpose, if the testament does not contain an express advantage clause. The excess over and above the disposable portion is void. In a partition by donation, there can be no advantage clause.

**3559** [3525]. The partition, whether by donation *inter vivos* or by testament, can take place only among the legitimate and natural children and descendants, the right of representation<sup>16</sup> being observed.

**3560** [3526]. The partition by the ascendant among his descendants cannot take place when the conjugal partnership actually exists or continues with the living spouse or his or her heirs.

**3561** [3527]. In the apparent absence of any acquets and gains in the marriage, the partition by testament must include not only the legitimate and natural children, or their descendants, if there are none of the former, but also the surviving spouse.

**3562** [3528]. If the partition is not made among all the legitimate and natural children living at the time of the death of the ascendant, and the descendants of those who have died and the surviving spouse, in the case of the preceding article, it shall be void.

**3563** [3529]. The birth of a child born of another marriage of the ascendant, subsequently to the partition, and a posthumous child, annuls the partition. The exclusion of a child existing at the time of the partition, but dying without issue before the opening of the succession, does not invalidate the act. The share of the deceased is divided among the other heirs.

**3564** [3530]. In order to make the partition, whether by donation or by testament, the ascendant must collate to the mass of his property the donations he has made to his descendants, observing with regard to the collation the provisions of Chapter III of this Title.

**3565** [3531]. A partition made by testament is subservient to the death of the ascendant, who may revoke it during his lifetime. Any alienation he makes during his lifetime of

<sup>16</sup> See Art. 3583 [3549].

any of the objects comprised in the partition does not annul it, if the *légitimes* of the heirs to whom said things had been allotted are left intact.

**3566** [3532]. A partition by testament charges the heirs with all the obligations of the testator.

**3567** [3533]. A partition by testament produces the same effects as an ordinary partition. The heirs are mutually bound to each other to guarantee the portions received by them.

**3568** [3534]. The amount of this guaranty must relate back to the period of the death of the ascendant. If the latter alienated objects which constituted part of the portion of one of the descendants after the partition by testament, he is entitled to the guaranty of the objects alienated.

**3569** [3535]. The children and descendants among whom a partition has been made by a donation *inter vivos*, and their heirs or successors, are authorized to exercise, even before the death of the ascendant, all the rights which the act confers upon each with respect to the others, and they may bring an action to enforce the guaranty of the things comprised in their portions whenever the eviction thereof takes place.

**3570** [3536]. A partition by a donation or testament may be rescinded when it does not leave intact the *légitime* of any one of the heirs. The action for rescission cannot be brought until after the death of the ascendant.

**3571** [3537]. The heirs may demand the reduction of the portion allotted to one of the coparceners when it appears that he has received an amount in excess of that of which the law permits the testator to dispose. This action may be directed only against the favored descendant.

**3572** [3538]. The express or implied confirmation of the partition by the descendant whose *légitime* has not been completed, does not imply a waiver of the action vested in him by the preceding article.

## TITLE VII. OF VACANT SUCCESSIONS.

**3573** [3539]. When, after the citation by notices for a period of thirty days of any persons claiming a right to the succession, or after the expiration of the period for making the inventory and to deliberate, or when, the heir having repudiated the inheritance, no claimant has appeared, the succession is considered vacant.

**3574** [3540]. Any person who has any claims against the succession may apply for the appointment of a curator of the inheritance. The judge may also appoint one *ex mero motu* or on motion of the government attorney (*fiscal*).

**3575** [3541]. The curator must make an inventory of the inheritance before a notary public and two witnesses. He exercises the hereditary rights actively and passively, and his powers and duties are the same as those of an heir who has accepted an inheritance with the benefit of inventory. But he cannot receive payment, nor the proceeds of the things sold. Any money belonging to the inheritance must be deposited to the order of the judge taking cognizance of the succession.

**3576** [3542]. After the curator to the succession has entered on his duties, those claiming it thereafter are obliged to take the things in the state in which they are as a result of the proper operations of the curator.

**3577** [3543]. Payments to the curator of the inheritance, by the hereditary creditors, do not discharge their obligations unless the sum paid by them has been applied to the benefit of the succession.

**3578** [3544]. When there are no creditors of the inheritance, and the hereditary property has been sold, the judge of the succession must, *ex mero motu* or on motion of the government attorney, declare the inheritance vacant, and after payment of all costs and the fees of the curator, transfer the sum of money deposited, to the National Government, or to the Provincial Government, according to the laws in force regarding successions escheating to the Fisc.

**TITLE VIII. OF INTESTATE SUCCESSIONS.**

**3579** [3545]. Intestate successions belong to the legitimate and natural descendants of the deceased, to his legitimate and natural ascendants, to the surviving spouse, and to the relatives within the sixth degree inclusive, in the order and according to the rules established in this Code. If there are no legitimate successors, the property escheats to the general or provincial State.

**3580** [3546]. A relative nearer in degree excludes one more remote, without prejudice to the right of representation.

**3581** [3547]. The origin of the property of which the inheritance consists is not taken into consideration in these successions.

**3582** [3548]. Those called to an intestate succession succeed not only in their own right, but also by the right of representation.

**CHAPTER I.****Of the Right of Representation.**

**3583** [3549]. Representation is the right whereby the children in an ulterior degree are placed in the degree which their father or mother held in the family of the deceased, in order to succeed jointly in his or her place to the same share of the inheritance to which the father or the mother would have succeeded.

**3584** [3550]. The representative is called to the succession exclusively by the law and not by the person represented.

**3585** [3551]. In order for representation to take place, it is necessary that the representative himself be capable of succeeding the person whose succession is involved.

**3586** [3552]. A person who has renounced the succession of another can represent him.

**3587** [3553]. A person cannot represent the person from whose succession he has been excluded as unworthy, or by whom he has been disinherited.

**3588** [3554]. Deceased persons only can be represented, excepting a person renouncing an inheritance, who, even though living, may be represented by his children.

**3589** [3555]. The children of an absentee presumptively dead may also represent him, in the absence of proof that he was living at the time of the opening of the succession.

**3590** [3556]. Only persons who would have been called to the succession of the deceased can be represented.

**3591** [3557]. Representation is allowed without end in the direct descending line, whether the children of the deceased, even though of different marriages, participate with the descendants of a predeceased child, or whether all the children of the deceased, having died before him, stand to each other in unequal or equal degrees.

**3592** [3558]. One person may represent a number of persons in the same succession, ascending all the intermediate degrees, provided all the persons standing between the representative and the deceased have died. If one of them is living, the representation cannot take place.

**3593** [3559]. Representation does not take place in favor of the ascendants. The nearest always excludes the more remote.

**3594** [3560]. Representation takes place in the collateral line only in favor of the children and descendants of brothers or sisters, whether of the same father and mother or on one side only, for the division of the inheritance of the ascendant with the other coheirs standing in a nearer degree.

**3595** [3561]. When children or descendants of two or more brothers or sisters of the deceased are left, they inherit from the latter by representation, whether they are alone and in equality of degrees, or whether they participate with their uncles or aunts.

## CHAPTER II.

### Effects of Representation.

**3596** [3562]. Representation causes the representatives to step into the rights which the person represented would have had in the succession if living, either to participate with the other relatives, or to exclude them.

**3597** [3563]. In all cases in which representation is allowed, the division of the inheritance is made *per stirpes*. If it has produced a number of branches, the subdivision is also made in each branch *per stirpes*, among the members of such branch.

**3598** [3564]. When the children come to the succession by representation, they must collate to the inheritance whatever the deceased gave their parents in his lifetime, even though the succession had been repudiated by the parents.

## TITLE IX. OF THE ORDER IN INTESTATE SUCCESSIONS.

### CHAPTER I.

#### Succession of Legitimate Descendants.

**3599** [3565]. The legitimate children of the person leaving the succession, whether of one or more marriages, inherit from him in their own right and share and share alike, without affecting thereby the rights given in this Title to natural children and to the surviving widow or widower.

**3600** [3566]. The grandchildren and other descendants inherit from ascendants by right of representation, in accordance with the provisions contained in the Title *Of Intestate Successions*, Chap. I.



## CHAPTER II.

### Succession of Ascendants.

**3601** [3567]. When there are no legitimate children and descendants, the ascendants inherit, without prejudice to the rights declared in this Title in favor of natural children and descendants and the surviving spouse.

**3602** [3568]. If both the father and mother of the deceased are living, they inherit from him share and share alike. If one of them only is living, he or she inherits the entire estate, without prejudice to the modification contained in the preceding article.

**3603** [3569]. In default of the father and mother of the deceased, his ascendants nearest in degree inherit from him share and share alike, even though they be of different lines.

## CHAPTER III.

### Succession of the Spouses.

**3604** [3570]. If a widower or widow and legitimate children are left, the surviving spouse has in the succession the same share as that of each of the children.

**3605** [3571]. If ascendants and a widow or widower are left, the latter shall participate with the ascendants in the division of the succession *per capita*, without prejudice to the rights of the natural child.

**3606** [3572]. If neither descendants nor ascendants are left, the spouses inherit from each other reciprocally, excluding all the collateral relatives, without prejudice to the rights of the natural children.

**3607** [3573]. The succession offered to the widower or widow in the three preceding articles shall not take place when one of the spouses, having been ill at the time of the

celebration of the marriage, dies of said illness within thirty days thereafter.

**3608 [3574].** If divorced by the decree of a judge of competent jurisdiction, the spouse who gave cause for the divorce does not have any of the rights declared in the preceding articles.

**3609 [3575].** The succession of the spouses *inter se* ceases also, if they are actually living apart without the intention of reuniting, or if they have been provisionally separated by a judge of competent jurisdiction.

**3610 [3576].** In all cases in which the widower or the widow is called to the succession in participation with descendants or ascendants, he or she shall not have any share in the division of the property belonging to the predeceased spouse as acquets and gains of the marriage with said widower or widow.

## CHAPTER IV.

### Of the Succession of Natural Children.

**3611 [3577].** If the deceased leaves no legitimate descendants or ascendants, nor widow nor widower, his legally acknowledged natural children inherit from him, whether born of the same mother or of the same father, or of the same mother and of different fathers, or of the same father and of different mothers.

**3612 [3578].** If a widower or widow only is left, the natural children shall divide the inheritance share and share alike, the widower or widow taking one-half thereof, if the property does not consist of acquets and gains of the marriage, and the natural child or children the other half.

**3613 [3579].** If legitimate descendants are left, the share of the natural child shall always be one-fourth that of the legitimate child. In order to obtain this share it shall be assumed that there are four times the number of legitimate children, and thereto shall be added the number of natural

children, and then as many equal parts shall be made as there are fictitious children: each natural child shall take one part, and each legitimate child four parts.

**3614** [3580]. If legitimate ascendants are left, the natural children shall divide the inheritance with them, taking one-half, whatever be the number of the ascendants or of the natural children.

**3615** [3581]. If legitimate ascendants are left, and a widow or widower, the ascendants shall take one-half of the inheritance for division among them by persons, and the other half shall be divided between the widow or widower and the natural children: in such manner that the widow or widower shall have one-fourth of the succession, and the natural child or children the other fourth.

**3616** [3582]. A natural child never inherits from the natural grandparents nor from the legitimate children and relatives of the father or mother who acknowledged him; nor do the natural grandparents, nor the legitimate children and relatives of his father or mother, inherit from the natural child.

**3617** [3583]. The hereditary rights of a natural child are transmitted upon his death to his descendants by right of representation.

## CHAPTER V.

### Of the Succession of Natural Parents.

**3618** [3584]. If the natural child dies without leaving any legitimate or natural posterity, he is succeeded by the father or mother who has acknowledged him; and if both have acknowledged him and are living, they shall inherit from him share and share alike.

## CHAPTER VI.

### Succession of Collateral Relatives.

**3619** [3585]. If there are neither descendants nor ascendants, nor a widower or widow, nor natural children, the collateral relatives of the deceased nearest in degree to the sixth inclusive, inherit from him, without prejudice to the right of representation of the nephews and nieces to participate with the uncles and aunts. Those in the same degree inherit share and share alike.

**3620** [3586]. The brother or sister of the father or mother excludes in the succession of the deceased brother or sister, a half brother or sister or a brother or sister on the father's or mother's side only.

**3621** [3587]. When the deceased leaves no full brothers or sisters nor children of the latter, but only half brothers or sisters, the latter succeed in the same manner as brothers or sisters on both sides, and their children succeed to the deceased brother or sister.

## CHAPTER VII.

### Succession of the Fisc.

**3622** [3588]. In default of persons entitled to inherit in accordance with the foregoing provisions, the property of the deceased, whether real or personal, situated within the territory of the Republic, whether a foreigner or an Argentine citizen, shall escheat to the Fisc, either National or Provincial, according to the laws in force in this regard.

**3623** [3589]. The rights and obligations of the State in general, or of each particular State, in the case of the preceding article, are the same as those of heirs.

In order for the State to be able to take possession of the

property of a vacant succession,<sup>16</sup> the judge must deliver such property to it under inventory and judicial appraisal.

The Fisc is liable only to the amount which represents the value of the property.

## CHAPTER VIII.

### Succession of Reserved Property.

**3624** [3590]. If at the time of the death of the father or mother who has contracted a second marriage, there are neither children nor legitimate descendants of the first marriage, although there are heirs, the latter have no right to succeed to the reserved property.

## TITLE X. OF THE LEGAL PORTION OF FORCED HEIRS.<sup>17</sup>

**3625** [3591]. The *légitime* of forced heirs is a right of succession limited to a specified portion of the inheritance. The capacity of the testator to make his testamentary dispositions with respect to his patrimony, extends only to the amount above the legal portion which the law assigns to his heirs.

**3626** [3592]. All persons called to an intestate succession are entitled to a legal portion in the order and manner determined in the first five chapters of the preceding Title.

**3627** [3593]. The legal portion of legitimate children is four-fifths of all the property existing at the time of the death of the testator and of that which is to be collated to the mass of the inheritance; the provisions of articles **3604** [3570] and **3613** [3579] being observed in the distribution thereof.

<sup>16</sup> See Art. 3573 [3539].

<sup>17</sup> Throughout this translation, *legal portion* is a translation of *porción legítima* and *légitime* is a translation of *legítima*.

**3628** [3594]. The *légitime* of the ascendants is two-thirds of the property of the succession, the provisions of articles **3605** [3571] and **3614** [3580] being observed in the distribution thereof.

**3629** [3595]. The *légitime* of the spouses, when there are neither descendants nor ascendants of the deceased, is one-half of the property of the succession of the deceased spouse, even when the property of the succession consist of acquets and gains.

**3630** [3596]. If the testator leaves neither legitimate descendants or ascendants, nor a widower or widow, the *légitime* of his natural children is one-half of the property remaining at his death.

**3631** [3597]. The *légitime* of the natural parents who have acknowledged the natural child, when such child leaves neither legitimate descendants nor a surviving spouse, nor natural children, is one-half of the property left by the natural child. If legitimate or natural children legally acknowledged are left, the natural father is not entitled to any *légitime* whatsoever. If only a widow or widower survives, the *légitime* of the natural father is one-fourth of the succession.

**3632** [3598]. The testator cannot impose any charges or conditions whatsoever upon the *légitimes* provided for in this Title. If he does so, they shall be considered as not written.

**3633** [3599]. Any renunciation or agreement regarding the prospective *légitime* between those who make it and the forced coheirs, is void. The heirs may claim their respective *légitimes*; but they must bring to collation what they have received under the contract or renunciation.

**3634** [3600]. A forced heir to whom the testator leaves less than his *légitime*, under any title, can demand only the amount necessary to complete it.

**3635** [3601]. Testamentary dispositions which impair the *légitime* of the forced heirs shall on their petition be reduced to the proper amount.

**3636** [3602]. In determining the *légitime*, the value of the property left at the death of the testator shall govern.

To the net value of the hereditary property shall be added the value of the donations of the testator at the time he made them. The donations shall not be taken into consideration if the *légitime* can be covered by reducing the testamentary dispositions pro rata, or setting them aside if necessary.

**3637** [3603]. If the testamentary disposition be of a usufruct or life annuity, the value of which exceeds the amount disposable by the testator, the legal heirs may elect between carrying out the testamentary disposition, or delivering to the beneficiary the disposable amount.

**3638** [3604]. If the testator has delivered some of the property to one of the legal heirs under a contract, in full ownership, even though charged with the payment of a life annuity or with the reservation of the usufruct, the value of the property shall be appropriated to the disposable portion of the testator, and the residue shall be brought to the mass of the succession. This appropriation and collation cannot be sued for by the legal heirs who have agreed to the alienation, and in no case by those to whom a legal portion has not been assigned by the law.

**3639** [3605]. The testator may bequeath the disposable portion as he deems fit, or advantage therewith the portion of his legal heirs. No other portion of the estate can be diverted to advantage the shares of the legal heirs.

## TITLE XI. OF TESTAMENTARY SUCCESSION.

**3640** [3606]. Every person legally capable of having a will and of manifesting it, has the power to dispose of his property by testament, in accordance with the provisions of this Code, whether under the title of institution of heirs, or of legacies, or under any other name adequate to express his will.

**3641** [3607]. A testament is a written act, clothed with the formalities of the law, whereby a person disposes of all or part of his property to take effect after his death.

**3642** [3608]. In testamentary dispositions, any condition or charge, legally or physically impossible, or opposed to morality, avoids the disposition in which it is imposed.

**3643** [3609]. The conditions set forth in Art. **565** [531] of this Code are expressly prohibited. It is incumbent upon the judges to decide whether some other condition or charge comes under any of the classes of conditions of the preceding article.

**3644** [3610]. The provisions relating to conditional obligations apply to testamentary dispositions subject to a condition.

**3645** [3611]. The law of the actual domicile of the testator, at the time of making his testament, is that which governs his capacity or incapacity to make it.

**3646** [3612]. The contents of the testament, their legal validity or nullity, are governed by the law in force in the domicile of the testator at the time of his death.

**3647** [3613]. In order to judge of the capacity to make a testament, the time when the testament was made only shall be taken into consideration, whether at the time of his death the testator was or was not capable.

**3648** [3614]. Persons of either sex under eighteen years of age cannot make a testament.

**3649** [3615]. In order to be able to make a testament it is essential that the testator have his full reason. Insane persons may make a testament during their lucid intervals only when they are sufficiently certain and prolonged to give assurance that the disease has ceased for the time being.

**3650** [3616]. The law presumes that every person is of sound mind, in the absence of proof to the contrary. The burden of proof that the testator did not have his full reason at the time of making his dispositions is on the person who demands the annulment of the testament; but if the testator for some time before making his testament was notoriously in a habitual state of insanity, the person who maintains the validity of the testament must prove that the testator made it during a lucid interval.

**3651** [3617]. Deaf mutes unable to read and write cannot make a testament.



**3652** [3618]. A testament cannot be made in the same instrument by two or more persons, whether in favor of a third person, or as a mutual and reciprocal disposition.

**3653** [3619]. The testamentary dispositions must be the direct expression of the will of the testator. The latter cannot delegate them nor give a power of attorney to another to make a testament, nor leave any of his dispositions to the discretion of a third person.

**3654** [3620]. All dispositions made by the testator as to the institution of heirs or legatees, referring to private documents or papers found after his death among his own papers or in the possession of another, are void, if the documents or papers do not fulfill the requisites necessary for holographic testaments.

**3655** [3621]. Any disposition in favor of an uncertain person is void, unless by some event such person might become certain.

## TITLE XII. OF THE FORMS OF TESTAMENTS.

**3656** [3622]. The usual forms of making a testament are: the holographic testament, the testament by public act, and the sealed testament.

**3657** [3623]. The different testaments enumerated in the preceding article are subject to the same rules as to the nature and scope of the dispositions they contain, and enjoy the same juridical force.

**3658** [3624]. Every person capable of disposing by testament may make a will as he sees fit, in one or the other of the usual forms of testaments; but it is necessary that he possess the physical and intellectual qualities required for the form in which he desires to make his dispositions.

**3659** [3625]. The validity of a testament depends upon the observance of the law in force at the time it is made. A subsequent law does not carry any change whatsoever, either in favor or to the prejudice of the testament, even though enacted during the lifetime of the testator.

**3660** [3626]. The form of one kind of testament cannot be extended to testaments of another kind.

**3661** [3627]. The proof of the observance of the formalities prescribed for the validity of a testament must appear in the testament itself, and not in other acts proved by witnesses.

**3662** [3628]. The employment of useless and superabundant formalities does not vitiate a testament which is otherwise regular, even when such formalities, if the testator considered them necessary, cannot be held to have been validly fulfilled. Thus, a larger number of witnesses than that required by the law does not vitiate the testament, which remains valid notwithstanding the incompetency of some of them, provided a sufficient number of competent witnesses remains after the exclusion of the incompetent witnesses.

**3663** [3629]. The testator cannot confirm by a subsequent act the dispositions contained in a testament which is void in form, without repeating them, even when such act is clothed with all the formalities required for the validity of testaments. But the testator may make reference in his testament to another testament which is valid in form, but which has become ineffective on account of the incapacity of the legatees or heirs instituted.

**3664** [3630]. The nullity of a testament on account of a vice of form, carries with it the nullity of all of the dispositions it contains; but if all the formalities have been observed, the nullity of the institution of heirs, for any reason whatsoever, does not annul the other dispositions.

**3665** [3631]. A testament made with the formalities prescribed by law is valid throughout the life of the testator, no matter what time has elapsed since it was made. As long as it has not been revoked, the presumption is that the testator entertains the same will.

**3666** [3632]. Last wills cannot be legally expressed otherwise than by an act clothed with the formalities which are required for testaments. A writing, even though signed by the testator, in which he makes known his dispositions merely by reference to an act devoid of the formalities required for testaments, is of no value.

**3667 [3633].** In testaments in which the law requires the signature of the testator himself, said signature must be written with all the alphabetical letters of which his name and surname consist. A testament is not considered as signed when the surname only has been written, or the names and surnames with initials, or when in place of signing one's own surname that of another family to which the testator does not belong has been written. Nevertheless, an irregular and incomplete signature is considered sufficient when the person has been in the habit of signing private or public acts in that manner.

**3668 [3634].** Testaments made in the territory of the Republic must be executed in one of the forms established in this Code, whether the testators are Argentines or foreigners.

**3669 [3635].** When an Argentine is in a foreign country, he is authorized to make a testament in any one of the forms established by the law of the country in which he may be. Such testament shall always be valid, even though the testator return to the Republic, and at whatever time he dies.

**3670 [3636].** A written testament made in a foreign country by an Argentine, or by a foreigner domiciled in the State, before a Minister Plenipotentiary of the Government of the Republic, a Chargé d'Affaires, or a Consul, and two Argentine or foreign witnesses, domiciled in the place where the testament is made, and bearing the seal of the Legation or Consulate, is valid.

**3671 [3637].** A testament made in the form prescribed in the preceding article, which was not executed before the Head of the Legation, shall be viséed by the latter, if there be a Head of Legation, at the foot thereof if an open testament, and on the wrapper if a sealed testament. An open testament shall always be rubricated by said head at the beginning and end of each page, or by the Consul if there is no Legation. If there be neither Consulate nor Legation of the Republic, these formalities shall be fulfilled by the Minister or Consul of a friendly nation.

The head of the Legation, and if there be none the Consul, shall forward a copy of the open testament, or of the inscription

on the wrapper of the sealed testament, to the Minister of Foreign Affairs of the Republic, and the latter, after authenticating the signature of the Head of Legation or Consul, as the case may be, shall transmit it to the judge of the last domicile of the deceased in the Republic, in order that said judge may cause it to be incorporated in the protocols of a notary public of the same domicile.

When the domicile of the testator in the Republic is unknown, the Minister of Foreign Relations shall forward the testament to a judge of first instance of the capital for incorporation in the protocols of such notary public as the judge may determine.

**3672 [3638].** The testament of a person who is outside of the country produces effect in the Republic only if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in the Nation to which he belongs, or according to those which this Code prescribes as legal formalities.

## CHAPTER I.

### Of Holographic Testaments.

**3673 [3639].** A holographic testament, in order to be valid as to its forms, must be written entirely and dated and signed by the hand of the testator himself. The absence of any one of these formalities annuls it as to its entire contents.

**3674 [3640].** If there is anything written in a strange hand, and the writing forms part of the testament itself, the testament is void, if the writing was done by order or with the consent of the testator.

**3675 [3641].** A holographic testament must necessarily be written in the letters of the alphabet and may be written in any language.

**3676 [3642].** It is not essential that the designation of the day, month and year when the testament was made be according to the calendar: perfectly equivalent enunciations

determining in a precise manner the date of the testament may be substituted therefor.

**3677 [3643].** An incorrect or incomplete date may be considered sufficient when the vice which it presents is the result of mere inadvertence on the part of the testator and there are in the testament itself material enunciations or elements which fix the date in a certain manner. The judge may weigh the enunciations which correct the date, and admit any evidence obtained outside of the testament.

**3678 [3644].** The testator is not compelled to indicate the place where the testament was made, and any error he commits in the designation of such place has no bearing on the validity of the testament.

**3679 [3645].** The dispositions of the testator written below his signature must be dated and signed by him in order to make them valid as testamentary dispositions.

**3680 [3646].** When a number of dispositions are signed without being dated, and the last disposition has a signature and date, such date validates the dispositions preceding it, whatever be the time thereof.

**3681 [3647].** The testator is not obliged to write his testament all at the same time, nor under the same date. If he writes his dispositions at different times, he may date and sign each of them separately, or affix one date or signature to all of them on the day he concludes his testament.

**3682 [3648].** A holographic testament must be an act separate from other writings and books in which the testator customarily records his affairs. Letters, no matter how express they are with respect to the disposition of the property, cannot constitute an holographic testament.

**3683 [3649].** The testator may, if he deems it more advisable, cause his testament to be witnessed, place his seal thereon, or deposit it with a notary public, or make use of any other measure giving greater assurance that it is his last will.

**3684 [3650].** A holographic testament has the same value as a public and formal act; but it may be attacked as to its date, signature or writing, or as to the capacity of the

testator, by all persons against whom it is set up, and the latter may avail themselves of proof of any kind.

## CHAPTER II.

### Of Testaments by Public Act.

**3685** [3651]. Deaf persons, mutes and deaf-mutes cannot make a testament by public act.

**3686** [3652]. A blind person may make a testament by public act.

**3687** [3653]. A notary public who is a relative of the testator in the direct line in any degree whatsoever, or in the collateral line to the third degree of consanguinity or affinity inclusive, cannot take part in the drafting of the testament.

**3688** [3654]. A testament by public act must be made in the presence of a notary and three witnesses residing in the place.

**3689** [3655]. In rural towns and districts, when there is no notary public in the district of the municipality where the testament is executed, it must be made before the local justice of the peace and three witnesses residing in the municipality. If the justice of the peace is unable to be present, the testament must be made before one of the members of the municipal council with three witnesses.

**3690** [3656]. The testator may dictate the testament to the notary public, or give it to him already written, or merely give him in writing the dispositions which it is to contain in order that he may draft them in the usual form.

**3691** [3657]. The notary public must, under the penalty of nullity of the testament, state the place where it is executed, its date, the names of the witnesses, their residence and age, whether he made the testament or whether he only received the dispositions thereof in writing.

**3692** [3658]. Under the penalty of nullity, the testament must be read to the testator in the presence of the witnesses,

who must see it; and it must be signed by the testator, the witnesses, and the notary public. One of the witnesses at least must be able to sign for the other two if they are unable to do so: this circumstance must be stated by the notary public.

**3693** [3659]. If the testator dies before signing the testament, it shall be void, even though he had begun to sign it.

**3694** [3660]. If the testator, although knowing how to sign, states that he does not sign the testament because he does not know how, the testament shall be void, even when signed at his request by one of the witnesses or some other person.

**3695** [3661]. If the testator does not know how to sign, some other person or one of the witnesses may sign for him. In such case two of the witnesses at least must know how to sign.

**3696** [3662]. If the testator knows how to sign but is unable to do so, another person or one of the witnesses may sign for him. In such case, two of the witnesses at least must know how to sign. The notary public must state the cause why the testator cannot sign.

**3697** [3663]. If the testator can make his testament in a foreign language only, the presence is necessary of two interpreters who shall make the translation into Spanish, and the testament must in such case be written in the two languages. The witnesses must understand both languages.

**3698** [3664]. The notary public and the witnesses to a testament made by public act, their wives, and relatives or connections within the fourth degree, cannot benefit from the dispositions it contains in their favor.

## CHAPTER III.

### Of Sealed Testaments.

**3699** [3665]. A person unable to read cannot make a sealed testament.

**3700** [3666]. A sealed testament must be signed by the

testator. The wrapper containing it must be delivered to a notary public, in the presence of five witnesses residing in the place, with the statement that such wrapper contains his testament. The notary public shall certify to the presentation and delivery, writing the certification on the wrapper containing the testament, and it shall be signed by the testator and all the witnesses who can do so, for themselves and for those unable to sign at the request of the latter; but the number of witnesses signing for themselves shall never be less than three. If the testator is unable to sign for any cause, arising subsequently, some other person or one of the witnesses shall sign for him. The notary public must state in his superscription on the wrapper of the testament, the name, surname, and residence of the testator, of the witnesses and of the person who signed for the testator, as well as the place where, and the day, month and year when the act took place.

**3701** [3667]. The delivery and the superscription of the sealed testament must be an act uninterrupted by any other extraneous act, unless it be for brief intervals, when some incident makes it necessary.

**3702** [3668]. A person who knows how to write, although unable to speak, may execute a sealed testament. The testament must be written and signed by him, and he shall make the presentation thereof to the notary public and the witnesses by writing on the wrapper that it contains his testament; and the provisions relating to testaments of this class shall be observed in all other particulars.

**3703** [3669]. A deaf person may execute a sealed testament.

**3704** [3670]. A sealed testament which is not valid as such owing to the absence of some one of the formalities with which it must be clothed, is valid as a holographic testament, if written entirely and signed by the testator.

**3705** [3671]. A notary public who has in his possession or in his register a testament of any kind whatsoever, is obliged, upon the death of the testator, to notify the persons interested thereof, and is liable for any damages which his omission may cause them.



## CHAPTER IV.

## Of Special Testaments.

**3706 [3672].** In time of war, soldiers on a military expedition, or in a besieged garrison, or in barracks or a garrison situated without the territory of the Republic, and likewise volunteers, hostages or prisoners, military surgeons, the quartermaster corps, the chaplains, the sutlers, the men of science attached to the expedition, and other persons accompanying or serving such persons, may make a testament before an officer not below the rank of captain, or before an intendant of the army, or the judge advocate (*auditor general*) and two witnesses. The testament must state the place and date when made.

**3707 [3673].** If the person desiring to make a testament is ill or wounded, he may make it before the chaplain or the physician or surgeon attending him. If in a detachment, before the officer in command thereof, even though of a rank below that of captain.

**3708 [3674].** The testament shall be signed by the testator, if he knows how and is able to sign, by the officer before whom it was made, and by the witnesses. If the testator does not know how or is unable to sign, this fact shall be stated, and one of the witnesses shall sign for him. One of the witnesses at least must know how to sign.

**3709 [3675].** The witnesses must be males of full age, if they are only enlisted men; but it is sufficient for them to have attained the age of eighteen years, when of the rank of sergeant or higher.

**3710 [3676].** If the testator dies before ninety days after the date of the termination, in so far as he is concerned, of the circumstances which enable him to make a military testament, his testament shall be valid as if it had been executed in the usual form. If the testator survives this period, his testament lapses.

**3711 [3677].** If the testator dies, the testament executed

in the form prescribed must be forwarded to headquarters with the visé of the Chief of the General Staff, certifying to the rank or status of the person before whom it was made, and then transmitted to the War Department, the Minister of which Department shall forward it to the judge of the last domicile of the testator in order that he may have it protocolized. If the domicile of the testator is unknown, he shall forward it to one of the judges of the capital in order that he may cause it to be protocolized in the office the judge directs.

**3712 [3678].** If the person able to make a military testament prefers to make a sealed testament, any of the persons before whom he could have executed an open testament shall act as the certifying officer.

**3713 [3679].** Persons on board a man-of-war of the Republic, whether or not officers or members of the crew, may make a testament in the presence of the commander of the vessel and three witnesses, of which two at least must know how to sign. The testament must be dated. A duplicate thereof shall be made with the same signatures as the original.

**3714 [3680].** The testament shall be kept with the most important papers of the vessel, and mention thereof shall be made in the log-book.

**3715 [3681].** If, before returning to the Republic, the vessel touches at a foreign port at which there is an Argentine diplomatic or consular agent, the commander shall deliver a copy of the testament to such agent, and the agent shall forward it to the Minister of the Navy, for the purposes set forth with respect to military testaments. If the vessel returns to the Republic, he shall deliver it to the Captain of the Port for transmission for similar purposes to the Navy Department.

**3716 [3682].** If the person able to make a maritime testament prefers to make a sealed one, the formalities prescribed for testaments of this character shall be observed, the commander of the vessel or his second in command acting as the certifying officer, in the presence of three witnesses, of whom

two at least must know how to sign, the other provisions of this Chapter concerning maritime testaments being observed.

**3717 [3683].** On merchant vessels flying the Argentine flag, testaments may be made in the same form as on men-of-war, the testament being made before the master, his first mate or the navigating officer (*piloto*), the provisions relating to testaments made on a man-of-war being observed as to other requisites.

**3718 [3684].** The testament is valid only if the testator dies before landing, or within ninety days after landing.

Going on shore for a brief period and then re-embarking on the same vessel is not considered a landing.

**3719 [3685].** A testament is not considered as made on the sea if at the time it was executed the vessel was lying in a port where there is a consul of the Republic.

**3720 [3686].** The legacies in a maritime testament to the officers of the vessel, if not relatives of the testator, are void.

**3721 [3687].** Persons who can make military testaments and those who can make maritime testaments, may make testaments in the holographic form.

**3722 [3688].** Soldiers who have embarked on a State vessel upon a military expedition may make military testaments, or testaments in the form of a maritime testament.

**3723 [3689].** If on account of a plague or epidemic no notary public can be found in a town or hospital before whom a testament by public act can be made, it may be made before a member of the municipal council, or the head of the contagious disease hospital, with the other formalities prescribed for testaments by public act.

## CHAPTER V.

### Of the Opening, Publication, and Protocolization of Certain Testaments.

**3724 [3690].** A testament by public act, made in rural sections or towns before a justice of the peace or before a

municipal official, must be ordered protocolized on the petition of any interested party, without any other preliminary measure.

**3725** [3691]. Holographic testaments and sealed testaments must be presented as they are to the judge of the last domicile of the testator.

**3726** [3692]. A holographic testament, if sealed, shall be opened by the judge, and witnesses acquainted with the handwriting of the testator and his signature shall be examined. If they are genuine, in the opinion of the witnesses, the judge shall rubricate the beginning and end of each page thereof, and shall order that it be delivered with the record of all the proceedings had to the notary public participating in the proceedings, and that copies thereof be given to the persons entitled thereto.

**3727** [3693]. Any person having an interest in a sealed testament may petition the judge to have it opened.

**3728** [3694]. A sealed testament cannot be opened until after the notary and the witnesses acknowledge their signatures and that of the testator before the judge, declaring at the same time whether the testament is sealed as it was when the testator delivered it.

If owing to death or absence from the Province, all of the witnesses cannot appear, the acknowledgment of a majority thereof and of the notary shall be sufficient.

**3729** [3695]. If for similar reasons the notary, a majority or all of the witnesses, cannot appear, the judge shall make this fact a matter of record, and the proof of comparison of handwriting shall be admitted. Such proof having been made, the judge shall rubricate the beginning and end of each page, and order the testament protocolized and the persons interested given the copies thereof they request.

### **TITLE XIII. OF WITNESSES TO TESTAMENTS.**

**3730** [3696]. Any person may be a witness to a testament if not forbidden to be such by the law. Incompetency is not

presumed, and the proof thereof lies on the person basing his action thereon.

**3731** [3697]. An incompetent witness must be considered competent if, in public opinion, he is so considered.

**3732** [3698]. The competency of witnesses must exist at the time of the execution of the testament.

**3733** [3699]. The witnesses must be known to the notary. If he is unacquainted with them, he may, before executing the testament, require that two persons vouch for the identity and residence of the witnesses.

**3734** [3700]. The witnesses must understand the language of the testator and the language in which the testament is executed.

**3735** [3701]. The witnesses must reside in the district where the testament is executed.

**3736** [3702]. Neither ascendants nor descendants of the testator can be witnesses; but their collateral relatives or relatives by affinity may be witnesses, provided the testament does not contain any disposition in their favor.

**3737** [3703]. The relationship existing among a number of persons does not prevent them from being witnesses to a testament simultaneously.

**3738** [3704]. Executors, tutors and curators may be witnesses to the testament wherein they are appointed.

**3739** [3705]. The witnesses to a testament must be males of full age.

**3740** [3706]. The heirs instituted in the testament, the legatees, and those receiving any benefit under the dispositions of the testator cannot be witnesses.

**3741** [3707]. Nor can the relatives of the notary within the fourth degree, his office employees, or his servants be witnesses to testaments.

**3742** [3708]. Neither the blind, the deaf, nor the dumb can be witnesses to testaments.

**3743** [3709]. Persons who are deprived of their reason from any cause whatsoever cannot be witnesses. Insane persons cannot be witnesses, even during their lucid intervals.

## TITLE XIV. OF THE INSTITUTION AND SUBSTITUTION OF HEIRS.

**3744** [3710]. The institution of an heir can be made only by testament. The testator may institute or omit the institution of an heir in his testament. If he does not institute an heir, his dispositions must be carried out; and the succession to the residue of his property shall be as prescribed in intestate successions.

**3745** [3711]. The testator must appoint the heir himself. If he makes reference to one to be appointed by another by his direction, the institution is not valid.

**3746** [3712]. The heir must be designated by clear words, which leave no doubt as to the person instituted. If the institution is such as to leave some doubt between two or more persons, none of them shall be considered as the heir. This provision applies also to legacies.

**3747** [3713]. The heirs instituted enjoy the same rights as legal heirs with respect to third persons and *inter se*, except as to the hereditary possession. They may exercise all the actions which a legal heir could exercise: they may bring the actions which the deceased could have brought, even before taking possession of the hereditary property; but they are not obliged to collate the donations made to them by the testator by acts *inter vivos*.

**3748** [3714]. Forced heirs, even when not instituted in the testament, are those to whom the law reserves in the property of the deceased a portion of which he cannot deprive them, without a just cause of disinherison.

**3749** [3715]. The preterition of one or all of the forced heirs in the direct line, whether living at the time of the execution of the testament or born after the death of the testator, annuls the institution of heir; but the bequests and advantages are valid in so far as not inofficious. <sup>18</sup>

<sup>18</sup> That is to say, not in excess of the portion of which the testator can dispose.

**3750 [3716].** The heir instituted as to a certain and specified thing is considered as a legatee only: he has no other rights and is subject to no other charges than those expressly granted or imposed upon him, without prejudice to his liability in substitution of the heirs.

**3751 [3717].** A testamentary disposition whereby the testator gives one or more persons the universality of the property which he leaves at his death, is equivalent to instituting the persons designated as heirs, even when under the terms of the testament the disposition is restricted to the naked ownership and the usufruct is given separately to another person.

**3752 [3718].** If the testamentary dispositions absorb in legacies the universality of the property of the testator, they shall be considered as instituting heirs only when there exists between the different legatees a conjunction which can give rise to the right of accretion <sup>19</sup> among them.

**3753 [3719].** A disposition whereby the testator has bequeathed or devised the universality of his property with an assignment of shares, is not considered an institution of heir.

**3754 [3720].** If after having granted particular legacies to one or more persons, the testator wills the residue of his property to another person, the latter disposition is equivalent to the institution of such person as his heir, whatever be the importance of the objects bequeathed or devised as to the totality of the inheritance.

**3755 [3721].** Heirs instituted without a determination of shares, inherit share and share alike.

**3756 [3722].** The institution of the poor as heirs, or the soul of the testator, implies in the former case a legacy to the poor of the town of his residence only; and in the latter, the application to be made to masses for the rest of his soul and to charity.

**3757 [3723].** The right to institute an heir does not imply a right to appoint a successor to such heir.

**3758 [3724].** The testator may subrogate another to the heir appointed in the testament, in the event of the heir not

<sup>19</sup>See Art. 3845 [3811].

being willing or able to accept the inheritance. This is the only kind of substitution permitted in testaments.

**3759** [3725]. A simple substitution, without an expression of when it is to take place, comprises the following two cases: a case in which the heir instituted is not willing to accept the inheritance, and a case in which he cannot do so. A substitution to take effect in one of the two cases includes the other also.

**3760** [3726]. Two or more persons may be substituted for a single person, and vice versâ a single person may be substituted for two or more persons.

**3761** [3727]. When the testator reciprocally substitutes the heirs instituted in unequal shares, they shall have the same shares in the substitution as in the institution, unless the testator has provided otherwise.

**3762** [3728]. The substitute of a substitute is also understood to be that of the heir named in the first place.

**3763** [3729]. The substitute heir is subject to the same charges and conditions which are imposed on the instituted heir, if it does not clearly appear that the testator intended to limit them to the person of the heir instituted.

**3764** [3730]. The nullity of a fideicommissary substitution does not affect the validity of the institution of the heir, nor the rights of the heir designated in the first place.

**3765** [3731]. The provisions of this Title regarding the substitution of heirs apply to legatees also.

**3766** [3732]. The dispositions of the testator whereby a third person is called to all or part of the residue of the estate, upon the death of the heir instituted, and those declaring all or part of the estate inalienable, are void.

## **TITLE XV. OF THE CAPACITY TO RECEIVE BY TESTAMENT.**

**3767** [3733]. All persons who, having been conceived at the time of the death of the testator, are not declared by the law to be incapable or unworthy, can acquire by testament.



**3768** [3734]. Corporations not permitted by the law to acquire by testament cannot do so.

**3769** [3735]. Nevertheless, corporations which do not have the character of juristic persons may receive by testament, when the succession offered to them or the legacy left them is for the purpose of founding the same and then obtaining the proper authorization.

**3770** [3736]. The tutors of minors cannot receive anything under the testaments of minors dying while under their tutorship. Even after the termination of tutorship, they can receive nothing by the testament of the minors, if the accounts of their administration have not been approved.

**3771** [3737]. Ascendants who are or have been the tutors of their descendants are excepted from the provisions of the preceding article.

**3772** [3738]. The second husband of a widow who has remarried and who improperly retains the tutorship of her children by her first marriage, is incapable of receiving under the testament of the minor children of the first marriage of his wife.

**3773** [3739]. The following are incapable of succeeding or receiving legacies: the confessors of the testator during his last illness; the relatives of such confessors within the fourth degree, if not relatives of the testator; the churches in which they are employed, with the exception of the parish church of the testator, and the communities to which they belong.

**3774** [3740]. The Protestant minister who administers to the testator during his last illness is subject to the same incapacity.

**3775** [3741]. All dispositions in favor of an incapacitated person are void, whether disguised under the form of an onerous contract, or made in the name of interposed persons. The father and the mother, the children and descendants, and the spouse of the incapable person, are considered interposed persons. Evasion of the law may be proved by evidence of any kind.

**3776** [3742]. The interposed persons to which the pre-

ceding article relates must return the fruits collected from the property since they entered into the possession thereof.

**3777** [3743]. A testamentary disposition fails if the person in whose favor it was made does not survive the testator.

## TITLE XVI. OF DISINHERISON.

**3778** [3744]. A forced heir may, as a consequence of disinheriton, be deprived of the *légitime* granted him, for the causes set forth in this Title, and for no other causes, even though graver.

**3779** [3745]. The cause of disinheriton must be stated in the testament. Disinheriton without a statement of the cause therefor, or for a cause other than those designated in this Title, is void.

**3780** [3746]. The heirs of the testator must prove the cause of the disinheriton stated by the testator and no other, even though it be a legal cause, if the cause had not been established in court in the lifetime of the testator.

**3781** [3747]. Ascendants may disinherit their legitimate or natural descendants for the following causes:

1. On account of assault, as when the child put his hands on his ascendant. A mere threat is insufficient.

2. If the descendant has made an attempt upon the life of the ascendant.

3. If the descendant has brought a criminal accusation against the ascendant charging him with the commission of a crime to which is affixed a penalty of five years' imprisonment or forced labor.

**3782** [3748]. A descendant may disinherit his ascendant for the last two causes of the preceding article.

**3783** [3749]. The descendants of the person disinherited who survive the testator, occupy his place, and are entitled to the *légitime* which their ascendant would have received had he not been disinherited, and the ascendant shall not be entitled to the usufruct and administration of the property which his descendants inherit on this account.

**3784** [3750]. A subsequent reconciliation between the offender and the aggrieved party deprives him of the right to disinherit the offender and revokes the disinherison already made.

## TITLE XVII. OF LEGACIES (LEGADOS).<sup>20</sup>

**3785** [3751]. All things and rights which are in commerce,<sup>21</sup> even those which do not yet exist, but which will exist later, may be bequeathed or devised.

**3786** [3752]. The testator cannot bequeath or devise other than his own property. The legacy of a certain and specific thing belonging to another is void, whether the testator does or does not know that it does not belong to him, even though he subsequently acquire the ownership thereof.

**3787** [3753]. The legacy of a thing held in common with another is valid only as to the share of which the testator is the owner, with the exception of a case in which the husband bequeaths or devises something which belongs as acquets and gains to the husband and wife. The part of the wife shall be set aside in the account of the division of the partnership.

**3788** [3754]. If the testator orders that a thing belonging to another be acquired in order to be given to another person, the heir must acquire it and give it to the legatee; but if he is unable to obtain it because the owner of the thing refuses to alienate it, or because he demands an excessive price therefor, the heir shall be obliged only to give in money an amount equal to a just valuation of the thing.

If the thing belonging to another which has been bequeathed or devised had been acquired by the legatee before the testament was made, the value thereof shall be owing

<sup>20</sup> This term includes both bequests and devises. *Legatario*, which has been translated *legatee*, includes both legatees and devisees. *Devisee* has, however, been used when a devise only and not also a bequest is involved. The verb *legar* has been translated by the words *bequeath* and *devise*, according to the class of property referred to.

<sup>21</sup> See note to Art. 878 [844].

only if it had been acquired under an onerous title, and for a reasonable price.

**3789** [3755]. If the thing bequeathed or devised had been pledged or mortgaged before or after the execution of the testament, or encumbered by a usufruct, a servitude, or some other perpetual charge, the heir is not obliged to obtain the release of the charges which encumber it.

**3790** [3756]. The legacy of a thing which is not specific, but comprised in a kind or species determined by nature, is valid, even when the inheritance does not contain anything of such kind or species. The election shall be left to the heir, who discharges his obligation by giving something which is neither of the highest nor of the lowest quality, taking into consideration the amount of the estate, and the personal circumstances of the legatee.

**3791** [3757]. Whenever the testator leaves the election expressly to the heir or to the legatee, the heir in the former case may select the worst and in the latter case the legatee may select the best.

**3792** [3758]. In alternative legacies the provisions relating to alternative obligations shall be observed.

**3793** [3759]. The legacy cannot be left to the decision of a third person, but the testator may leave to the judgment of the heir the amount of the legacy and the time for its delivery.

**3794** [3760]. The legacy of a fungible thing, the amount of which is not determined in some manner, is void. If a fungible thing is bequeathed and the place where it is to be found is stated, the amount found there at the time of the death of the testator shall be owing, if he did not designate the amount; and if did designate it, an amount not exceeding that designated in the testament shall be owing. If the existing amount is less than that designated the existing amount only shall be owing, and if there is no amount of the fungible thing at such place nothing shall be owing.

**3795** [3761]. The species bequeathed or devised is due in the state in which it is at the time of the death of the testator, including the implements thereon necessary to its use.

**3796** [3762]. If the thing devised is an estate, the lands and new buildings which the testator has added thereto since making his testament are not included in the devise; and if that which has been newly added forms with the remainder, at the time of the opening of the succession, a whole which cannot be divided without grave loss, and the additions are more valuable than the estate in its original condition, the value of the estate only shall be owing the devisee; if they are worth less, the whole shall be owing the devisee, subject to the charge of paying the value of the additions, plantings, or improvements.

**3797** [3763]. If a house be devised with its furniture or with everything it contains, the devise is understood to include only the furniture which constitutes its furnishings and which is in the house; hence, if a rural estate is devised in the same manner, it is not to be understood that the devise includes other things than those which are thereon, and used in the cultivation and operation of the estate.

**3798** [3764]. An error as to the name of the thing bequeathed or devised is of no consequence, if it is possible to determine what is the thing which the testator had the intention of bequeathing or devising.

**3799** [3765]. In case of doubt as to the greater or lesser amount of the thing bequeathed or devised, or as to its greater or lesser value, it must be held that the thing bequeathed is the lesser amount or that having the lower value.

**3800** [3766]. The legatee of specified things becomes the owner thereof upon the death of the testator, and transmits to his heirs the right to the legacy; the fruits of the thing belong to him, and its loss, deterioration or increase runs for his account. This provision applies to legacies limited to a time certain or subject to a resolutory condition.

**3801** [3767]. The legatee cannot take the thing bequeathed or devised without demanding it of the heir or executor charged with the payment of the legacies. The expenses of the delivery of the legacy are borne by the succession.

**3802** [3768]. The legatees are obliged to demand the

delivery of the legacies even though at the time of the death of the testator they are in possession, under any title whatsoever, of the objects comprised in their legacies.

**3803** [3769]. A legacy which consists of a release is excepted from the provisions of the preceding article. The legatee may demand that the title of the debt, if any exist, be returned to him.

**3804** [3770]. The voluntary delivery of the legacy which the heir desires to make is not subject to any formality whatsoever. It may be made by letter or impliedly by the fulfillment of the legacy.

**3805** [3771]. Legacies subject to a suspensive condition or to an uncertain term are not acquired by the legatees until the condition is fulfilled or the term arrives.

**3806** [3772]. If the execution or payment of the legacy, and not the disposition itself, is made subject to a suspensive condition or an uncertain term, the legacy must be considered as a pure and simple legacy with respect to its acquisition and its transmission to the heirs of the legatee.

**3807** [3773]. A legatee subject to a suspensive condition or an uncertain term may, before the expiration of the term or the fulfillment of the condition, exercise acts for the preservation of his right.

**3808** [3774]. Legacies subject to charges are governed by the provisions relating to donations *inter vivos* of the same class.

**3809** [3775]. When the legacy is of an object determined in its individuality, the legatee is authorized to revendicate<sup>22</sup> it from third persons having it in their possession, with the citation of the heir.

**3810** [3776]. The heirs are personally bound to the payment of the legacies in proportion to their hereditary share; but they are solidary when the thing bequeathed or devised does not admit of division.

**3811** [3777]. If the thing bequeathed or devised is divisible and has been destroyed through the act or fault of one of the heirs, the heir through whose fault or act the thing has been lost is the only one liable for the legacy.

<sup>22</sup> See Art. 2792 [2758].

**3812 [3778].** If a thing certain, having been bequeathed or devised, has been included, as a result of the partition, in the lot falling to one of the heirs, the others shall continue, nevertheless, bound to the payment of the legacy, without prejudice to the right of the legatee to bring an action to recover the entire thing against the person to whom it fell in his allotment.

**3813 [3779].** The heirs or persons charged with the payment of the legacies are liable to the legatee for the deterioration or loss of the thing bequeathed or devised and its accessories, occurring after the death of the testator, either through their fault or owing to their delay in delivering it, unless in the latter case the loss or deterioration would have occurred likewise if the thing bequeathed or devised had been delivered to the legatee.

**3814 [3780].** The legatee of a certain thing is not entitled to guaranty against eviction; but if the legacy consists of an indeterminate thing of a certain species, or of two things bequeathed or devised under an alternative, if eviction takes place he may demand another thing of the species indicated, or the second of the things comprised in the alternative.

**3815 [3781].** If a thing is bequeathed or devised under the condition that it is not to be alienated, and the alienation thereof does not affect any right of a third person, the clause that it is not to be alienated shall be considered as not written.

**3816 [3782].** If the instrument which is the evidence of a debt is bequeathed, it is understood that the debt is remitted; if a thing held as a pledge is bequeathed, the debt is also understood to have been remitted, if there is no public or private document thereof; if there is and it is not bequeathed, the right of pledge only shall be considered to have been remitted.

**3817 [3783].** The remission of a debt by the testator in favor of his debtor, does not include the debts contracted after the date of the testament.

**3818 [3784].** The legacy of a debt to one of a number of solidary debtors, if not limited to the personal share of the legatee, releases the other codebtors.

**3819** [3785]. The legacy to the principal debtor discharges the surety, but the legacy to the surety does not discharge the principal debtor.

**3820** [3786]. The legacy of a credit in favor of the testator comprises only the existing debt and the interest which has accrued to the date of the death of the testator. The heir is not liable for the insolvency of the debtor. The legatee has all the rights of action which the heir would have.

**3821** [3787]. Whatever the testator bequeaths or devises to his creditor cannot be compensated against the debt.

**3822** [3788]. The acknowledgment of a debt made in a testament is considered a legacy, in the absence of proof to the contrary, and it may be revoked by a subsequent disposition.

**3823** [3789]. If the testator orders the payment of what he believes he owes and does not owe, the disposition shall be considered as not written. If by reason of a specified debt more than the amount thereof is ordered paid, the excess is not owing, not even as a legacy.

**3824** [3790]. A legacy of support comprises the tuition corresponding to the social position of the legatee, board, clothing, lodging and medical attendance during illness up to the age of eighteen years, if not unable to support himself. If unable to do so, the legacy shall last during the lifetime of the legatee.

**3825** [3791]. Whatever is bequeathed or devised indeterminate to relatives is understood to have been bequeathed or devised to the consanguineous relatives in the nearest degree, according to the order of intestate succession, the right of representation taking place. If at the date of the testament there is only one relative in the nearest degree, those in the next following degree are considered to have been called at the same time.

**3826** [3792]. If the legacy is destined to an eleemosynary object, and no quota, quantity or kind has been determined, they shall be determined in accordance with the nature of the object and the amount of the property of which the testator could dispose.



**3827 [3793].** If a specified sum of money is bequeathed to be paid at certain stated times, as every year, the first term begins upon the death of the testator, and the legatee acquires the right to the entire sum due for each of the terms, even when he has survived only to the beginning of such term.

**3828 [3794].** In annual legacies or in legacies for specified terms, there are as many legacies as there are years or terms. A single period of prescription cannot extinguish them: as many periods of prescription as there are years or terms are • necessary.

**3829 [3795].** If the property of the inheritance or the portion thereof of which the testator can dispose is not sufficient to cover the legacies, the following provisions shall be observed: the common charges shall be taken from the hereditary mass, and the funeral expenses from the disposable portion; thereupon the legacies consisting of certain things shall be paid, then those left as compensation for services, and the residue of the estate or of the disposable portion, as the case may be, shall be distributed pro rata among the legatees of sums of money.

**3830 [3796].** When the succession is solvent, the legatees are not liable for the debts and charges of the succession, even though the debts have been contracted for the acquisition, preservation, or improvement of the thing bequeathed or devised.

**3831 [3797].** When the succession is insolvent, the legatees cannot be paid until the debts have been paid. If there are forced heirs, the legacies shall be reduced proportionately the amount necessary to permit the *légitimes* to be covered.

**3832 [3798].** All persons called to receive the succession or an aliquot part thereof, whether by virtue of the law or by virtue of a testament, are bound to the payment of the legacies in proportion to their share, without ever affecting the *légitimes* of the forced heirs. Those who are called only to receive particular objects are relieved from contributing to the payment of the legacies, whatever be the value of such objects in comparison with the value of the entire inheritance, unless the testator has disposed otherwise.

**FAILURE OF LEGACIES.**

**3833** [3799]. A legacy fails when the legatee dies before the testator, or when the payment of the legacy is subject to a suspensive condition or an uncertain term, and he dies before the fulfillment of the condition or the expiration of the term.

**3834** [3800]. If the legacy has been left to a person and his heirs, the death of such person before the periods designated in the preceding article does not cause the legacy to fail, and it passes to his heirs.

**3835** [3801]. The death of the legatee before such periods does not cause the legacy to fail, if the latter has been left rather to the title or quality vested in the legatee than to his person.

**3836** [3802]. The legacy fails when the suspensive condition to which it was subject is absent.

**3837** [3803]. (*As amended by the law of Corrections of September 9, 1882.*) A legacy fails also when the thing individually determined, which formed the object of the legacy, is totally destroyed before the death of the testator, by an act of the testator or otherwise, or by a fortuitous event; or after the death of the testator and before the advent of the condition, by a fortuitous event.

**3838** [3804]. A legacy fails upon the repudiation thereof by the legatee. A legacy is always presumed to have been accepted as long as it is not shown that it has been repudiated.

**3839** [3805]. After a legacy has been accepted, it cannot be repudiated on account of charges which render it onerous.

**3840** [3806]. A legatee may withdraw his renunciation of the legacy at any time before an act of partition among the heirs takes place.

**3841** [3807]. One part of a legacy cannot be repudiated and the other part accepted. If there are two legacies to the same legatee of which one is subject to a charge, the legatee may accept the legacy which is unencumbered and repudiate the other.

**3842** [3808]. The creditors of the legatee may accept the legacy which he has repudiated.

**3843** [3809]. The failure of a legacy resulting from any cause whatsoever, other than the loss of the thing bequeathed or devised, if there is no substitution, benefits those who were bound to the payment of the legacy, or those who would be prejudiced by its payment.

### **TITLE XVIII. OF THE RIGHT OF ACCRETION.**

**3844** [3810]. The right of accretion takes place only in testamentary dispositions.

**3845** [3811]. The right of accretion is the right which belongs by virtue of the presumed will of the deceased to a legatee or heir, to benefit by the share of his colegatee or coheir, when the latter does not take it.

**3846** [3812]. Accretion in inheritances and legacies takes place when different heirs or legatees are called conjointly to the same thing as an entirety.

**3847** [3813]. A testamentary disposition is considered as made conjointly when the same object is given to a number of persons, without any designation of the share of each of the legatees or heirs in the object of the institution or legacy.

**3848** [3814]. When the testator has assigned shares in the inheritance or thing bequeathed or devised, accretion does not take place.

**3849** [3815]. An assignment of shares the only purpose of which is to execute the legacy, or make the partition among the legatees of the thing bequeathed or devised in common, does not bar the right of accretion.

**3850** [3816]. A legacy is considered to have been left conjointly in all cases in which one and the same object, whether susceptible or not of being divided without deteriorating, has been given in the testament to a number of persons, either by separate dispositions of the same act, or by different acts.

**3851** [3817]. A legacy left conjointly must be so considered, even though the testator has substituted one or more of the joint legatees.

**3852** [3818]. When the legacy of a usufruct, left jointly to two persons, has been accepted by them, the portion of one of them, which has subsequently become vacant through his death, does not accrue to the other, but is merged with the naked ownership, unless the testator, expressly or impliedly, manifested his intention that the survivor enjoy the entire usufruct.

**3853** [3819]. If the testator, in leaving a legacy which according to the preceding articles is to be considered as having been left conjointly, prohibited any accretion, or in leaving a legacy not left conjointly, established the right of accretion among the colegatees, his disposition must prevail over the provisions of this Title.

**3854** [3820]. When the right of accretion lies, the vacant portion of one of the colegatees is divided among all of the others in proportion to the share in the legacy assigned to each.

**3855** [3821]. The right of accretion imposes upon the legatees desirous of receiving the portion which has failed in the person of one of them, the obligation of fulfilling the charges imposed upon him.

**3856** [3822]. If the charges are merely personal in their nature to the legatee whose share in the legacy has failed, they do not pass to the other colegatees.

**3857** [3823]. The colegatees for whose benefit the right of accretion is or can be established, transmit such right to their heirs with their shares in the legacy.

## **TITLE XIX. OF THE REVOCATION OF TESTAMENTS AND LEGACIES.**

**3858** [3824]. A testament may be revoked at the will of the testator at any time before his death. Any waiver or restric-

tion of this right is void. The testament does not confer upon the heirs instituted any right at the time.

**3859** [3825]. The revocation of a testament made without the Republic, by a person who does not have his domicile in the State, is valid when it takes place according to the law of the place where the testament was made, or according to the law of the place in which the testator had his domicile at the time; and if made in the Republic, when revoked according to the provisions of this Title.

**3860** [3826]. A testament made by a person not married at the time, is revoked as soon as he or she contracts marriage.

**3861** [3827]. A testament can be revoked only by a subsequent testament made in one of the forms authorized by this Code.

**3862** [3828]. A subsequent testament annuls the previous testament in all its parts, if it does not contain a confirmation of the first.

**3863** [3829]. The testator cannot confirm, without reproducing them, the dispositions contained in a testament which is void as to its form, even when the instrument is clothed with all the formalities required for the validity of testaments.

**3864** [3830]. If the subsequent testament is declared void on account of a defect of form, the earlier testament remains valid. But if the new dispositions contained in the subsequent testament are ineffective on account of the incapacity of the heirs or legatees, or fail owing to any other cause, the revocation of the first testament by the existence of the second shall always stand.

**3865** [3831]. A retractation in testamentary form by the maker of the subsequent testament revives his first dispositions without the necessity of an express declaration. But if the retractation contains new dispositions, it does not then revive those contained in the first testament, if he does not state that it is his intention to revive them.

**3866** [3832]. Any testamentary disposition based on a false cause<sup>23</sup> or on a cause which has no effect, is null and void.

<sup>23</sup> Consideration.

**3867** [3833]. The cancellation or destruction of a holographic testament by the testator himself, or by another person by his order, is equivalent to its revocation when there is but one original testament. If there are a number, the testament is not revoked until all the originals have been destroyed or canceled.

**3868** [3834]. The alterations which a testament has suffered by a mere accident or the act of a third person without an order from the testator, do not affect the contents of the act if the dispositions contained therein can be exactly ascertained.

**3869** [3835]. When a torn or canceled testament is found in the house of the testator the presumption is that it was torn or canceled by him, if the contrary be not proved.

**3870** [3836]. The breaking of the wrapper containing a sealed testament by the testator, is equivalent to the revocation of the testament, even though the wrapper containing the testament remains sound and complies with the formalities required for holographic testaments.

**3871** [3837]. If the testament has been entirely destroyed by a fortuitous event or *force majeure*, the heirs instituted or the legatees shall not be permitted to prove the dispositions which the testament contained.

**3872** [3838]. The alienation of the thing bequeathed or devised, whether under a gratuitous or an onerous title, or with a clause of repurchase, is equivalent to the revocation of the legacy, even when the alienation is void, and even when the thing returns to the ownership of the testator.

**3873** [3839]. The mortgage of a thing devised, or the pledge of a thing bequeathed, for the security of an obligation, does not cause the revocation of the legacy; but the thing passes to the legatee with the mortgage or pledge which encumbers it.

**3874** [3840]. The sale of the thing bequeathed or devised under a judicial order, made on the petition of the creditors of the testator, does not revoke the legacy if the thing returns to the ownership of the testator.

**3875** [3841]. Legacies may be revoked after the death of the testator on account of the non-fulfillment of the charges imposed on the legatee, when such charges are the definite cause of his disposition.

**3876** [3842]. The revocation of legacies on account of the non-execution of the charges imposed is governed by the provisions relating to the revocation of donations *inter vivos* for the same cause.

**3877** [3843]. Revocation for a cause of ingratitude does not lie except in the following cases:

1. If the legatee has made an attempt to kill the testator.
2. If he has been guilty of excessive cruelty,<sup>24</sup> or committed a crime or grave injuries against the testator after the execution of the testament.
3. If he has done a grave injury<sup>25</sup> to his memory.

## TITLE XX. OF EXECUTORS.

**3878** [3844]. The testator may appoint one or more persons and entrust to them the execution of his testament.

**3879** [3845]. The appointment of a testamentary executor must be made under the forms prescribed for testaments; but it need not be made in the testament the execution of which it is sought to assure.

**3880** [3846]. The testator can appoint as executor only persons who are capable of binding themselves at the time of discharging the executorship, even though incapable at the time of their appointment.

**3881** [3847]. A married woman may be an executrix with the leave of her husband or of the judge; but judges cannot authorize her to discharge the executorship against the will of her husband.

**3882** [3848]. A person incapable of receiving a legacy in the testament may be the testamentary executor: and like-

<sup>24</sup> *Sevicia* (see note to Art. 224 [67] subd. 4.

<sup>25</sup> See note to Art. 224 [67] subd. 5.

wise the heirs and legatees, the witnesses and the notary before whom it is made.

**3883** [3849]. If the testator has left a legacy to the executor in consideration of the execution of his testament, the executor cannot claim the legacy without accepting the functions of a testamentary executor.

**3884** [3850]. A legacy to an individual who cannot be a testamentary executor is valid, even though the mandate have no effect.

**3885** [3851]. The powers of the executor are those designated by the testator in accordance with the laws; and if he did not designate them, the testamentary executor shall have all the powers which, according to the circumstances, are necessary to execute the will of the testator.

**3886** [3852]. If there are forced heirs, or heirs instituted in the testament, the possession of the inheritance belongs to the heirs, but such part thereof must remain in the hands of the executor as may be necessary for the payment of the debts and legacies, if the heirs do not set up, with respect to the legacies, that their *légitimes* would be impaired by the payment thereof.

**3887** [3853]. The heirs and legatees, in the event of well founded fear for the safety of the property which the executor holds, may require him to furnish the necessary security.

**3888** [3854]. When the sole object of the dispositions of the testator is to leave legacies, and there are no legal nor instituted heirs, the possession of the inheritance belongs to the executor.

**3889** [3855]. The executor cannot delegate the power he has received, nor does it pass to his heirs upon his death; but he is not obliged to act personally: he may do so through mandataries acting under his instructions, and is liable for their acts. He may appoint the mandataries, even when the testator has appointed another subsidiary executor.

**3890** [3856]. The testator may give the executor the power to sell his movable or immovable property; but the executor cannot make use of this power unless indispensable to the execution of the testament, and with the concurrence of the



heirs or authorization from a judge of competent jurisdiction.

**3891 [3857].** The executor must cause the property left by the testator to be safeguarded, and proceed to make an inventory thereof after citing the heirs, legatees, and other persons interested. If any of the heirs are absent, or minors, or should be under curatorship, the inventory must be judicial.

**3892 [3958].** The testator cannot exempt the executor from the obligation of making the inventory of the property of the succession.

**3893 [3859].** The executor must pay the bequests with the knowledge of the heirs; and if the latter oppose the payment, he must suspend it until the question is decided between the heirs and legatees.

**3894 [3860].** If there are legacies for objects of public charity, or destined to works of religious piety, he must notify the authorities at the head of such works, or the persons in charge of the objects of public charity.

**3895 [3861].** The executor may sue the heirs and legatees for the performance of the charges which the testator has imposed upon them in his own interest.

**3896 [3862].** He has the right to intervene in contests regarding the validity of the testament or the execution of the dispositions thereof; but he cannot intervene in the actions brought by the creditors of the succession, or other third persons, in which the heirs and legatees only are parties.

**3897 [3863].** The appointment of an executor leaves the heirs and legatees all rights the exercise of which is not expressly vested in the executor.

**3898 [3864].** The heirs may demand the removal of the executor on the ground of his incapacity for the execution of the testament, or for improper conduct in the discharge of his duties, or for having failed in his own business.

**3899 [3865].** The executorship terminates by the complete execution of the testament, by incapacity arising after the assumption thereof, by the death of the executor, by his removal ordered by the judge, and by his voluntary resignation.

**3900** [3866]. When an official has been appointed a testamentary executor in his capacity as such official, his powers pass to the person who succeeds him in office.

**3901** [3867]. When the testator has not appointed an executor, or when the person appointed ceases in his functions owing to any cause whatsoever, the heirs and legatees may agree on the appointment of a testamentary executor; but if they do not do so, the creditors of the succession or other persons interested cannot demand the appointment of an executor. The execution of the dispositions of the testator devolves on the heirs.

**3902** [3868]. The executor is obliged to render an accounting of his administration to the heirs, even though the testator relieved him from so doing.

**3903** [3869]. The executor is liable to the heirs and legatees for his administration, if he has endangered their interests through a failure to fulfill his obligations.

**3904** [3870]. When a number of executors have been appointed, under any name whatsoever, the executorship shall be discharged by each of those appointed in the order in which he is named, unless the testator has expressly disposed that it is to be discharged by common agreement among those appointed. In such case, they are all solidary. Any disagreements arising shall be settled by the judge of the succession.

**3905** [3871]. If there are a number of solidary executors, one alone may act in default of the others.

**3906** [3872]. The executor is entitled to a commission the amount of which shall be measured by his work and the amount of the property of the succession.

**3907** [3873]. The expenses incurred by the executor in the discharge of his functions are borne by the succession.

**3908** [3874]. After the examination of the accounts by the respective persons interested, and after deduction of the lawful expenses, the executor shall pay or collect the balance appearing against him or in his favor, according to the provisions relating to tutors in similar cases.

## SECTION II. CONCURRENCE OF REAL AND PERSONAL RIGHTS AGAINST THE ESTATE OF A COMMON DEBTOR.

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### TITLE I. OF THE PREFERENCE OF CREDITS.

**3909** [3875]. The right granted by the law to a creditor to be paid in preference to another, is called in this Code a privilege.

**3910** [3876]. A privilege can result only from a provision of the law. The debtor cannot create a privilege in favor of any of his creditors.

**3911** [3877]. Privileges are transmitted as accessories of the credits to the grantees and successors of the creditors, who may exercise them in the same manner as their grantors.

### CHAPTER I.

#### Division of Privileges.

**3912** [3878]. Privileges are on movables and immovables, or only on movables, or only on immovables. Privileges on movables are general or special. Privileges on immovables are all special, with the exception of those enumerated in the following article, and are enforced only on specified immovables, unless the general privileges on movables are insufficient to cover the privileged credits.

**3913** [3879]. The following are privileged on all the property in general of the debtor, whether movable or immovable:

1. Judicial costs incurred in the common interest of the creditors, and those of administration during the insolvency proceedings.

2. Credits of the Public Treasury and of the Municipalities, for public taxes, whether direct or indirect.

**3914 [3880].** Credits privileged on all movables in general, are the following:

1. The funeral charges, in proportion to the standing and means of the debtor. These comprise the expenditures rendered necessary on the occasion of the death and the interment of the debtor and the customary religious services; the funeral expenses of the children who lived with him and the mourning expenses of the widow and children, when they have no property of their own from which to meet them.
2. The expenses of the last illness during six months.<sup>26</sup>
3. The wages of servants and employees for six months, and the wages of day laborers for three months.
4. The support furnished the debtor and his family during the last six months.<sup>27</sup>

The periods mentioned in the preceding subdivisions are those next preceding the death, or the attachment of the movable property of the debtor.

5. Credits in favor of the Public Treasury or of the Municipalities, on account of public taxes.

**3915 [3881].** When the proceeds of the immovable property have not been absorbed by the privileged or mortgage creditors, the portion of the price which remains due is subject with preference to the payment of the credits enumerated in the preceding article.

**3916 [3882].** Credits privileged on movable property are enforceable according to the number which indicates their classification. Those under the same number participate pro rata, if of equal standing.

<sup>26</sup> In some Codes the *last illness* is considered that from which the debtor died. Troplong says the same, establishing the principle that if the patient has recovered, the physician or surgeon has only a personal right of action against the debtor. But our article comprises also the last illness from which the debtor has recovered. To say that the debt of a physician who has lost his patient is not as favorable as that of one who saved his patient is conceded, but to prefer the former to the latter, and to deny the latter compensation which is granted the former, is against logic and justice. (Note in official edition of Code.)

<sup>27</sup> Troplong and other jurists understand by support (*alimentos*) what the Romans called *cibaria*, viz. provisions. We understand thereby what is necessary for the daily consumption of a household or person, such as clothing, lighting, etc., (Note in official edition.)

## CHAPTER II.

### Of Privileges on Certain Movables.

**3917 [3883].** Credits for the rental or lease of urban or rural estates are privileged, whether the creditors be the owners thereof, or the usufructuaries or principal lessees, for two years past when a house is involved, and for three years past when rural property is involved. The things to which this privilege extends are all the movables found in the house, and those used in working the rural estate, even though they do not belong to the lessee, whether attached thereto in a permanent manner or brought thereon for sale or consumption.

Money, the instruments of credit found in the house, and the movables which are there only temporarily, and whence they are to be removed, are not subject to the privilege of the lessor, when he has been notified of their destination, or when such destination is known to him on account of the occupation of the lessee, the nature of the thing or any other circumstance, as well as the movables which the lessor knew not to belong to the lessee, and things stolen or lost, which are not comprised in this privilege.

**3918 [3884].** The privilege of the lessor secures not only the rents due, but also all the other obligations of the lessee arising out of the contract of lease.

**3919 [3885].** If the movables subject to the privilege have been removed from the house rented, the owner of the house may, for one month, cause them to be attached in the enforcement of his privilege, even when they are in the hands of a possessor in good faith.

**3920 [3886].** An innkeeper enjoys the privilege of the lessor, subject to the same conditions and exceptions, on the effects brought into the inn, as long as they remain therein, and to the extent of the amount due him for lodging and the usual supplies furnished to travelers by innkeepers. This privilege does not extend to loans of money, nor is it given

for obligations other than the usual obligations of travelers.

**3921** [3887]. A similar privilege is enjoyed by a carrier on the goods transported which he has in his possession or which are in that of his agents, and for fifteen days after the delivery thereof to the owner, for the cost of the carriage and incidental expenses.

**3922** [3888]. The sums owing for seeds and the expenses of the crop are debts privileged on the proceeds of said crop.

**3923** [3889]. A pledge gives the creditor the right to recover payment before other creditors, without prejudice to the exceptions established in this Title. The privilege does not continue, if the pledge has left the possession of the creditor.

**3924** [3890]. If the creditor has been deprived of the possession of the pledge against his will, he may revendicate<sup>28</sup> it at any time within three years.

**3925** [3891]. The credit of an artisan or laborer enjoys a privilege for the price of his handiwork, on the movable repaired or made by him, as long as the thing remains in his possession.

**3926** [3892]. The expenses connected with the preservation of a movable thing, without which such thing would have been destroyed in whole or in part, must be paid with privilege on the proceeds thereof, whether the thing be in the possession of the person who incurred the expenses or not. The ordinary expenses of improvements which have no other object than to increase the utility or value of the thing do not enjoy any privilege.

**3927** [3893]. The vendor of movables which have not been paid for enjoys a privilege for the price thereof on the value of the thing sold, while in the possession of the debtor, whether sold for cash or on credit. If the thing has been resold and the price remains unpaid, the privilege may be enforced on the price.

**3928** [3894]. The privilege of the vendor cannot be enforced when the thing sold and not paid for has been pledged,

<sup>28</sup> See Art. 2792 [2758].

and the creditor is unaware of the rights of the vendor. The privilege of the latter continues only upon the amount remaining after the pledgee has been paid. But the privilege of the vendor is not extinguished when the pledgee knew that the thing received in pledge had not been paid for.

**3929** [3895]. Nor can the privilege of the vendor be enforced when the things sold and not paid for have been placed in a rented house, until the lessor has been paid the amount due him for rent, from the time the things sold and not paid for were brought therein, unless the vendor proves that the lessor knew that they had not been paid for. But the credit of the lessor for rent accruing prior to the time the things sold and not paid for were brought into the house, yields to the privilege of the vendor, if the latter should seek to recover them within the term of one month after his sale thereof.

**3930** [3896]. The privilege of the vendor remains in force even though the thing has suffered some change, while in the possession of the purchaser, provided the identity thereof can be established.

**3931** [3897]. If the depositary has abused the deposit by alienating the thing confided to his care, or if the heir sells it not knowing that it was held in deposit, the depositor has a privilege on the price due.

### CHAPTER III.

#### Of the Order of Privileges on Movable Things.

**3932** [3898]. If the movables not subject to special privileges are sufficient for the payment of the debts which enjoy a general privilege on movables, the latter shall be paid in the order in which they are placed in Art. 3914 [3880].

**3933** [3899]. When part of the movables is subject to special privileges and the remainder of the proceeds thereof is not sufficient for the payment of the credits privileged on the movables in general, or if the special privileges are on an

equal footing, the provisions of the following articles shall be applied.

**3934 [3900].** Judicial costs rank all credits in the interest of which they have been incurred.

**3935 [3901].** The expenses incurred in the preservation of the thing rank all other credits in the interest of which they have also been incurred. They also rank the expenses of the last illness, the salaries or wages of servants and domestics, the support<sup>29</sup> of the debtor and his family, and the claims of the Public Treasury and Municipalities; but the privilege of the person who preserved the thing is ranked by the funeral expenses and by those incurred in the sale of the thing preserved.

**3936 [3902].** If the expenses of the preservation of the thing were incurred prior to the liability of the thing for the credit of the lessor, of the pledgee, of the innkeeper, or of the carrier, these last named shall enjoy preference if, at the time of the express or implied constitution of the pledge as security, they were unaware of the credit of the person preserving the thing.

**3937 [3903].** If a number of persons have preserved the same thing successively, the one who has done so most recently ranks those who preceded him; and thus as to the credits of the persons who have preserved the thing, when each of them has performed a different act of preservation, the last shall rank the first; but if a number of persons have worked or incurred expenses in different operations, connected by the community of their purpose, their credits shall be paid by equal participation among them.

**3938 [3904].** The expenses connected with the sale of the movables subject to the privilege of the lessor, the funeral expenses and those of the last illness, rank the privilege of the lessor on the proceeds of the movables in the house; but the lessor ranks all other privileged debts of the debtor as to the proceeds of said movables.

**3939 [3905].** If the movables in the house or on the estate include objects which have been deposited by a third per-

<sup>29</sup> See note to subd. 4, Art. 3914.



son, the lessor ranks the depositor as to the things deposited, if there are no other movables on which his privilege can be enforced, or if they are insufficient; unless it be proved that the lessor knew that the things deposited did not belong to the lessee.

**3940** [3906]. With the exception of the preceding article, the privilege of the depositor is not ranked by any other privileged credit; but he is obliged to contribute to the necessary expenses of the inventory and the preservation of the thing deposited.

**3941** [3907]. A pledgee, an innkeeper, and a carrier rank the vendor of the movable object which constitutes his security, unless at the time of receiving it they knew that the price had not yet been paid.

**3942** [3908]. The privilege of the vendor is not enforceable until after the judicial and funeral expenses have been paid; and it also yields to that of the owner of the house or estate, unless at the time the movables were transported to the places rented the lessor knew of the existence of the credit of the vendor.

**3943** [3909]. The privilege of the lessor, if it participate with that of the pledgee on the fruits of the year's crop, yields to the latter if it is *bonâ fide*.

**3944** [3910]. The privilege of the carrier for the cost of transportation and incidental expenses yields only to the funeral expenses and those incurred in connection with the sale of the things transported.

**3945** [3911]. The sums due for seeds or expenses of the crop rank the credit of the lessor of the estate, on the proceeds of the crop.

**3946** [3912]. The creditors for seeds and the creditors for expenses of the crop participate equally.

**3947** [3913]. The privilege of the pledgee on the pledge which he has in his possession yields to the privilege of the funeral expenses and those of the last illness of the debtor, and the expenses connected with the sale of the thing held in pledge must also be paid first.

**3948** [3914]. The privilege of the innkeeper on the objects

brought into his inn yields to the judicial and funeral expenses; but his privilege on the proceeds of the sale of such effects ranks all other privileged credits.

**3949** [3915]. If the movables of the debtor, by reason of the special privileges to which they are subject, are insufficient for the payment of the debts which are privileged on the movables in general, the amount lacking shall be taken from the immovable property of the debtor.

**3950** [3916]. If the movables of the debtor are subject to the privilege of the vendor, or if a house or other work is involved which is subject to the privilege of the workmen who constructed or repaired it, or to that of the material men, the vendor, the workmen and the material men shall be paid from the proceeds of the sale of the object subject to their privilege before the other privileged creditors; with the exception of the mortgagees of the immovable, who shall be paid first, and the funeral and the judicial expenses necessarily incurred in the sale of such object.

**3951** [3917]. When the vendor of a tract of land finds that he ranks with the workmen for the payment of the building or any other work which has been constructed on the land, the value of the land and of the building shall be appraised separately. The vendor is paid from the land to the amount at which the land has been appraised, and the workmen to the amount of the valuation of the work. If the sale of the latter does not bring enough to pay these claims, they shall be paid in proportion to the valuation of the land and of the work.

**3952** [3918]. With the exception of the special privileges on the immovables in favor of the vendor, of the mortgagee, of the workmen, and of the material men, the creditors privileged on the movable and immovable property in general must be paid from the proceeds of the sale of the immovables before all other creditors of the debtor, in case of the insufficiency of the movables.

**3953** [3919]. When the credits privileged on the movables or immovables cannot be paid in full, because the immovables are of little value or subject to special privileges which

must be given preference, or because the movables and immovables are not sufficient to cover them, the deficit shall not be distributed among them, but these creditors shall be paid in the order in which they appear in Art. 3914 [3880], and the loss shall fall on the creditors of the lower class. If the concurrent credits are embraced in the same number, they shall be paid pro rata.

**3954 [3920].** Privileged credits in the same class participate pro rata as do simple chirograph creditors.<sup>30</sup>

**3955 [3921].** Privileged credits which cannot be fully covered by the means set forth in the preceding articles pass as to the balance due to the non-privileged credits.

**3956 [3922].** Non-privileged credits shall be paid pro rata from the residue of the mass which is the subject of the insolvency proceedings.

## CHAPTER IV.

### Of the Privilege on Immovables.

**3957 [3923].** The vendor of immovables who has not given time for the payment thereof may revendicate them from the purchaser, or from third parties in possession.

**3958 [3924].** The vendor of an immovable which has not been paid for, even when he has made tradition<sup>31</sup> thereof, has allowed time for payment, or has credited the purchaser in some other manner, enjoys a privilege for the price owing him, and may enforce it upon the proceeds of the immovable, as long as it remains in the possession of the debtor; but the administrators of property which is the subject of the insolvency proceedings are authorized to retain the immovable upon immediate payment of the price of the sale and any interest due.

**3959 [3925].** The privilege comprises, in addition to the price of the sale, one year's accrued interest, all the charges

<sup>30</sup> See note 21, p. 155.

<sup>31</sup> See Arts. 2407 et seq.

and prestations<sup>32</sup> imposed on the grantee for the personal benefit of the vendor or a third person designated by him; but it does not include damages, even though determined by a special clause of the contract.

**3960** [3926]. In case of a number of successive sales, the price of which is owing in whole or in part, the first vendor ranks the second, the second the third, and so on successively.

**3961** [3927]. A person who has given money for the purchase of an immovable enjoys a privilege on the immovable for the repayment of the money given, provided the deed of conveyance shows that the immovable was paid for with the money loaned, even though there be no express subrogation.

**3962** [3928]. The coheirs and all the coparceners who have divided a mass of property consisting both of movables and immovables, or of a number of specified movables, enjoy a privilege for the guaranty of the partition on the property previously undivided, and also for the price of the public sale of the immovable allotted to any one of them.

**3963** [3929]. If one of the heirs has lost his allotment and become insolvent, the part for which he was bound shall be divided between the guarantee and all the solvent coparceners.

**3964** [3930]. The donor enjoys a privilege on the immovable donated, for the pecuniary charges or other net prestations imposed on the donee by the act evidencing the donation.

**3965** [3931]. Architects, contractors, masons, and other workmen who have been employed by the owner to build, reconstruct or repair buildings or other works, enjoy a privilege for the sums due them on the proceeds of the immovable upon which their work was done. The subcontractors and the workmen employed, not by the owner but by the contractor who engaged them, do not enjoy this privilege.

**3966** [3932]. Persons who have loaned money for the payment of the architects, contractors, or workmen, enjoy the same privilege as the latter, provided the application of the money loaned is shown by the instrument of the loan, and by the receipts of the original creditors.

<sup>32</sup> See footnote p. 93.

**3967 [3933].** Persons who have furnished the material necessary for the construction or repair of a building or other work which the owner has caused to be constructed or repaired with said material, have a privilege on the building or work which has been constructed or repaired.

**3968 [3934].** Mortgagees are preferred on the property subject to the mortgage. The privilege runs from the date of the record of the mortgage. Those recorded on the same date participate pro rata.

**3969 [3935].** A renewed record is valid only as a first record if it does not contain the precise indication that it is a renewed record; but a reference to the previous records is not necessary.

**3970 [3936].** A mortgage secures, in addition to the principal, the interest or payments due for two years, and those accruing during the execution proceedings until actual payment.

**3971 [3937].** Special insolvency proceedings may be instituted on petition of the creditors against an estate subject to a mortgage to recover immediate payment from the proceeds of the sale thereof. In these proceedings the judicial costs incurred therein shall be paid first.

**3972 [3938].** The mortgage creditors are not obliged to await the results of the general insolvency proceedings before proceeding to exercise their actions against the respective estates: it is sufficient that they deposit with the court or give security in an amount considered sufficient for the payment of any credits which rank theirs, and that they return to the estate against which the insolvency proceedings are directed the balance remaining after payment of their claims.

## **TITLE II. OF THE RIGHT OF RETENTION.**

**3973 [3939].** The right of retention is the power which the holder of a thing belonging to another has to retain pos-

session thereof until payment is made of what is due him by reason of the same thing.

**3974** [3940]. The right of retention lies whenever the debt to which the thing retained is subject has arisen out of a contract or an act which produces obligations with respect to the holder thereof.

**3975** [3941]. The right of retention is indivisible. It may be enforced for the totality of the credit on each part of the thing which forms the object.

**3976** [3942]. The right of retention does not prevent other creditors from attaching the thing retained and causing the judicial sale thereof; but the person to whom it is awarded must, in order to obtain the objects purchased, deliver an amount to the holder thereof equivalent to the sum for which he is a creditor.

**3977** [3943]. The right of retention is extinguished by the delivery or voluntary relinquishment of the thing upon which it was enforceable; and it does not revive even though the same thing returns under some other title to his possession.

**3978** [3944]. When the person who retains the thing has been dispossessed thereof against his will by the owner or by a third person, he may bring such actions for the recovery thereof as this Code grants an ousted possessor.

**3979** [3945]. When the movable thing subject to the right of retention has passed into the hands of a third person who is a possessor in good faith, the restitution thereof cannot be sued for unless it had been lost or stolen.

**3980** [3946]. The right of retention does not prevent the enforcement of general privileges.

### **SECTION III. OF THE ACQUISITION AND LOSS OF REAL AND PERSONAL RIGHTS BY THE LAPSE OF TIME.**

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#### **TITLE I. OF PRESCRIPTION OF THINGS AND OF ACTIONS IN GENERAL.**

**3981 [3947].** Real and personal rights are acquired or lost by prescription. Prescription is a means of acquiring a right, or of releasing one's self from an obligation by the lapse of time.

**3982 [3948].** The prescription by which things are acquired is a right whereby the possessor of an immovable thing acquires the ownership thereof by continuous possession throughout the time fixed by the law.

**3983 [3949].** The prescription whereby obligations are discharged is a plea in bar of an action based on the mere fact of the person bringing it having failed to do so, or to enforce the right of action to which it relates within a certain elapsed time.

**3984 [3950].** All persons able to acquire may do so by prescription.

**3985 [3951].** The General or Provincial State, and all juristic persons, are subject to the same prescriptions as individuals, as to their property or rights susceptible of being private property; and they may likewise set up prescription.

**3986 [3952].** All things the ownership or possession of which can be acquired may be the subject of prescription.

**3987 [3953].** Rights which cannot be claimed except in the capacity of heir or donee of future property, as well as those the exercise of which is subject to an option which cannot take place until after the death of the person who has conferred it, are not susceptible of prescription until after the opening of the succession upon which they are to be exercised.

**3988** [3954]. The prescription of the hereditary action of the heirs instituted, or of the presumptive heirs of an absentee, does not begin as to the presumptive heirs until the day they have been given absolute possession of the property of the absentee, and as to the heirs, from the date of the opening of the succession.

**3989** [3955]. The action of revendication<sup>33</sup> which may be brought by a legal heir against the third grantees of immovables embraced in a donation subject to reduction on account of including a part of the *légitime* of the heir, is not subject to prescription until after the death of the donor.

**3990** [3956]. The prescription of personal actions, whether they bear interest or not, begins to run from the date of the title of the obligation.

**3991** [3957]. The prescription of an action upon the guaranty or warranty of conditional credits and credits subject to a certain time, does not begin to run until the date of the eviction, the performance of the condition, or the expiration of the term.

**3992** [3958]. In obligations under which interest or an income is payable, prescription of the principal begins to run from the date of the last payment of the interest or income.

**3993** [3959]. The prescription of things possessed by force or violence does not begin to run until the day the possession was purged of its vice.

**3994** [3960]. The time for the prescription of an obligation to render an accounting does not begin to run until the date on which the persons required to render such accounting ceased in their respective offices. That for prescription against the net result of the account runs from the day on which it was accepted by the parties, or received final judicial approval.

**3995** [3961]. The prescription of real actions in favor of a third person who holds the thing begins to run from the date of the acquisition of the possession or quasi-possession which serves as a basis therefor, even when the person against whom it is running is unable, by reason of a condition which

<sup>33</sup> See Art. 2792 [2758].



has not yet been performed or a term which has not yet expired, effectively to enforce his rights.

**3996** [3962]. Prescription may be set up either in the court of first instance or on appeal, and at any stage of the proceedings, before the judgments rendered have acquired the force of *res judicata*; but it cannot be pleaded in superior courts, if not proved by the instruments presented, or by the witnesses heard in the court below.

**3997** [3963]. The creditors and all the persons interested in enforcing the prescription may plead it notwithstanding the express or implied waiver of the debtor or owners.

**3998** [3964]. The judge cannot *ex mero motu* supply the plea of prescription.

**3999** [3965]. Any person who can alienate, may waive an acquired prescription, but not a future right of prescription.

## CHAPTER I.

### Of the Suspension of Prescription.

**4000** [3966]. Prescription does not run against minors, whether emancipated or not, nor against persons under curatorship, even when the prescription has begun in the person of one of full age whom they have succeeded, with the exception of the cases in which the laws have provided otherwise.

**4001** [3967]. The prescription of the action of a minor who has attained his majority against his tutor for acts of the tutorship, runs against his minor heirs in the event of his death.

**4002** [3968]. The prescription of actions for the annulment of juridical acts, which has begun to run against a person of full age, runs likewise against his minor heirs, without prejudice to the remedy of the latter against the negligent tutor.

**4003** [3969]. Prescription does not run between husband and wife, even when separated as to property, and even when divorced by an authority of competent jurisdiction.

**4004** [3970]. Prescription is likewise suspended during the marriage, when the action of the wife might react against the husband, either by an action upon warranty, or by exposing him to suits, or to the payment of damages.

**4005** [3971]. With the exception of the cases of the preceding articles, prescription runs against a married woman not only as to the property the administration of which she has reserved, but also with respect to the property which has passed to the administration of her husband.

**4006** [3972]. Prescription does not run against the heir who has accepted the inheritance with the benefit of inventory, with respect to his credits against the succession.

**4007** [3973]. The prescription of the actions of tutors and curators against the minors and persons under curatorship, as well as their actions against the tutors and curators, does not run during the tutorship or curatorship.

**4008** [3974]. A beneficiary heir cannot invoke in his favor any prescription which has fully run to the prejudice of the succession he administers.

**4009** [3975]. If there be a number of beneficiary heirs who are debtors to the succession, prescription runs with respect to the part of the credits of the coheirs who have not interrupted it, unless the right is indivisible.

**4010** [3976]. Prescription is not suspended during the indivision of the inheritance for the benefit of a pure and simple heir, with respect to his rights against the succession.

**4011** [3977]. Prescription runs against a vacant succession<sup>34</sup> and in favor thereof, even when no curator has been appointed thereto.

**4012** [3978]. Prescription runs in favor of and against a succession, during the time allowed for making the inventory and deliberating on its acceptance.

**4013** [3979]. Prescription runs in favor of and against the property of bankrupts.

**4014** [3980]. When by reason of difficulties or a present impossibility, the exercise of an action has been temporarily prevented, the judges are authorized to release the creditor

<sup>34</sup> See Art. 3573 [3539].

or the owner from the consequences of prescription completed during the impediment, if after the cessation thereof the creditor or owner immediately asserted his rights.

**4015 [3981].** The benefit of the suspension of prescription may be invoked only by or against the persons to the prejudice or for the benefit of whom it is established, and not by or against co-interested parties.

**4016 [3982].** The provisions of the foregoing article do not comprise indivisible real obligations or things.

**4017 [3983].** The effect of the suspension is to eliminate the time it has continued from the prescription; but the time subsequent to the cessation of the suspension, as well as the time prior to the beginning thereof, is computed in the period of the prescription.

## CHAPTER II.

### Of Interruption of Prescription.

**4018 [3984].** Prescription is interrupted when the possessor is deprived of the enjoyment of the thing for one year by the former owner, or by a third person, even when the new possession is unlawful, unjust or violent.

**4019 [3985].** Even when the possession of a new occupant has lasted more than one year, if it has been interrupted by an action before the expiration of the year, or by the recognition of the right of the plaintiff, the new possession does not operate to interrupt the prescription.

**4020 [3986].** The prescription is interrupted by an action against the possessor, even when brought before a judge not of competent jurisdiction, and even when it is void on account of a defect in form or because the plaintiff did not have the legal capacity to sue.

**4021 [3987].** The interruption of prescription caused by the action is considered as not having taken place if the plaintiff discontinues his action, if he allow it to drop, according to the provisions of the Code of Procedure, or if final judgment is rendered in favor of the defendant.

**4022** [3988]. An agreement by a public instrument submitting the question of the possession or ownership to arbitration, interrupts the prescription.

**4023** [3989]. Prescription is interrupted by the express or implied admission by the debtor or possessor of the right of the person against whom prescription was running.

**4024** [3990]. The interruption of the prescription benefits the owner even when not due to his act, but to the act of a third person, whereby the possessor has been deprived of possession for more than one year.

**4025** [3991]. The interruption of prescription by a suit, benefits only the person who instituted it and those who derive their right from him.

**4026** [3992]. The interruption of prescription by one of the co-owners or co-creditors, when there is no deprivation of possession, does not benefit the others; and vice versâ the interruption caused against one of the co-possessors or co-debtors only cannot be set up against the others.

**4027** [3993]. A suit brought against one of the coheirs does not interrupt the prescription with respect to the others; even when a mortgage debt is involved, if the suit was not directed against the holder of the mortgaged immovable.

**4028** [3994]. The interruption of prescription caused by one of the solidary creditors, benefits the co-creditors; and vice versâ that operating against one of the solidary debtors may be set up against the others.

**4029** [3995]. A suit brought by one of the heirs of one of the solidary creditors does not interrupt the prescription to the benefit of his coheirs; and it does not interrupt it to the benefit of the other creditors except as to the share of the plaintiff heir in the credit; and vice versâ a suit brought against one of the heirs of a solidary codebtor does not interrupt the prescription with respect to his coheirs; and does not interrupt it with respect to the other debtors, except as to the part which the defendant heir had in the solidary debt.

**4030** [3996]. When an obligation or the object of the prescription is indivisible, the interruption of the prescription by a single one of the interested parties benefits and may be set up against the others.

**4031** [3997]. The action brought against the principal debtor, or the acknowledgment of his obligation, interrupts the prescription against the surety; but the action brought against the surety, or his acknowledgment of the debt, does not interrupt the prescription of the principal obligation.

**4032** [3998]. When prescription is interrupted, the possession which preceded the interruption is considered as never having taken place; and the ownership by prescription cannot be acquired except by virtue of a new possession.

### CHAPTER III.

#### Of Prescription Whereby Ownership is Acquired.

**4033** [3999]. A person who acquires an immovable in good faith and with a just title acquires its ownership by prescription by continuous possession for ten years, if the real owner resides in the province in which the immovable is situated; and by continuous possession for twenty years if he is domiciled elsewhere.

**4034** [4000]. If the estate sought to be acquired by prescription belongs *pro indiviso* to two owners, of whom one is present and the other absent, the possessor for ten years acquires only the interest of the owner present, but needs ten years more to acquire by prescription the interest of the absent owner. If the thing is indivisible, the prescription cannot be completed until the possession has continued twenty years.

**4035** [4001]. The cause, nature and vices of the possession of the grantor of an immovable are not considered for the prescription established by the preceding article.

**4036** [4002]. If the owner of the immovable was present part of the time and absent the other part, each two years' absence shall be counted as one year in completing the ten years' period of the time present.

**4037** [4003]. The presumption is that the present possessor who submits in support of his possession a deed conveying

the property, has had possession since the date of the deed, if the contrary be not proved.

**4038** [4004]. The universal successor of the possessor of the immovable, even though in bad faith, may acquire it by prescription of ten or twenty years, if his predecessor was a possessor in good faith; and vice versâ he cannot acquire it by prescription in a contrary case, notwithstanding his personal good faith.

**4039** [4005]. A particular successor in good faith may acquire by prescription even though the possession of his predecessor was in bad faith. When the particular successor is in bad faith, the good faith of his predecessor does not authorize him to acquire by prescription. He may tack his possession to that of his predecessor, if both are legal.

**4040** [4006]. The good faith required for prescription is the belief beyond any doubt on the part of the possessor that he is the exclusive owner of the thing.

The provisions contained in the *Title Of Possession*, regarding possessors in good faith, are applicable to this Chapter.

**4041** [4007]. The ignorance of the possessor, based on an error of fact, is excusable; but not that based on an error of law.

**4042** [4008]. Good faith is always presumed and it is sufficient that it was present at the moment of the acquisition.

**4043** [4009]. A defect in the form of the deed of acquisition raises a presumption of the bad faith of the possessor.

**4044** [4010]. A just title for prescription is any title the object of which is the transfer of a right of ownership, which is clothed with the solemnities essential to its validity, without consideration to the condition of the person from whom it emanates.

**4045** [4011]. The title must be genuine and actually apply to the immovable possessed. A putative title is not sufficient, whatever be the grounds which the possessor has to believe that he had a sufficient title.

**4046** [4012]. A title which is void on account of a defect in form cannot serve as a basis for prescription.

**4047** [4013]. Even when the nullity of the title is merely relative as to the person who acquires the thing, it cannot

cause prescription to run against third persons or against the persons from whom the title emanates.

**4048** [4014]. A title subject to a suspensive condition has no force for prescription until after the performance of the condition. A title subject to a resolutive condition is effective for prescription from the time of its origin.

**4049** [4015]. The ownership of immovables and of other real rights is also acquired by prescription by continuous possession for thirty years, with the intention of owning the thing, without the necessity of any title or good faith on the part of the possessor, and without any distinction between persons present and absent, without prejudice to the provisions regarding servitudes, for the acquisition of which by prescription a title is necessary.

**4050** [4016]. The absence or nullity of his title, or bad faith in his possession, cannot be set up against a person who has held uninterrupted possession for thirty years.

## CHAPTER IV.

### Of Prescription Operating to Release from Obligations.

**4051** [4017]. The debtor is released from any obligation by the mere silence or non-action of the creditor, during the time prescribed by law. Neither a just title nor good faith are necessary for this prescription.

**4052** [4018]. The creditor cannot defer the oath to the debtor or his heirs as to whether or not they know that the debt has not been paid.

**4053** [4019]. All actions are subject to prescription with the exception of the following:

1. An action of revendication <sup>35</sup> of the ownership of a thing which is out of commerce.<sup>36</sup>

<sup>35</sup> See Art. 2792 [2758].

<sup>36</sup> See note to Art. 878 [844].

2. An action to establish a status, brought by the child himself.<sup>37</sup>

3. An action for division, as long as the undivided ownership continues.

4. A negatory action involving a servitude which has not been acquired by prescription.

5. An action for the separation of estates, as long as the movables of the succession are in the possession of the heir.

6. The action of the owner of an estate entirely surrounded by neighboring estates to obtain a right of way over them to the public road.

## TITLE II. OF THE PRESCRIPTION OF ACTIONS IN PARTICULAR.

**4054** [4020]. An action for the partition of an inheritance against a coheir who has possessed all or part thereof in his own name and as the universal and particular owner, prescribes after thirty years.

**4055** [4021]. The action of a debtor for the return of the pledge given for the security of a credit after payment thereof prescribes after thirty years, if the thing has remained in the possession of the creditor or his heirs.

**4056** [4022]. Prescription of thirty years confers the exclusive ownership of an enclosure or fence upon one of the neighbors.

**4057** [4023]. Every personal action for the recovery of a demandable debt prescribes after ten years among persons present, and twenty years among absentees, even when the debt is secured by mortgage.

**4058** [4024]. After absolute possession of the property of an absentee has been granted, the action of his children and direct descendants for the enforcement of their rights prescribes after ten years among persons present and twenty among absentees.

<sup>37</sup> See Art. 293.



**4059 [4025].** The action of a minor, his heirs or representatives, against the tutor by reason of the administration of the tutorship, and vice versâ that of the tutor against the minor or his heirs, prescribes after ten years counted from the date the minor attains his majority, or from the date of his death.

This prescription is not interrupted by any agreement of the minor with the tutor after the termination of the tutorship and before the rendition of accounts.

**4060 [4026].** The action of the usufructuary to enter upon the enjoyment of the usufruct, prescribes after ten years as to the owner of the thing, without the necessity of a title or good faith.

**4061 [4027].** The obligation to pay arrears prescribes after five years when the following are involved:

1. Allowances for support.
2. Rentals, whether of rural or urban estates.
3. Anything payable yearly, or at shorter periodical intervals.

**4062 [4028].** The action of the heirs to demand the reduction of the share allotted to one of the coparceners, when the latter has received under the partition made by the parents an amount in excess of that of which the law permits an ascendant to dispose, prescribes after four years.

**4063 [4029].** The action of a child acknowledged by the person claiming to be its father, against the acknowledgment, prescribes two years after the child attains his majority.

**4064 [4030].** An action for the annulment of juridical acts, on the ground of violence, intimidation, *dolus*,<sup>38</sup> error, or a false cause, prescribes two years after the violence or intimidation ceased, or after the time the error, *dolus*, or false cause became known.

**4065 [4031].** An action for the annulment of obligations contracted by married women without proper authorization, or by minors and persons under curatorship, prescribes also after two years. The time of prescription begins to run in the

<sup>38</sup> See Arts. 965-969.

former cases from the date of the dissolution of the marriage, and in the latter cases, from the date they attained their majority or were discharged from the curatorship.

**4066** [4032]. The obligation to pay the following prescribes after two years:

1. To arbitrators or co-judges, lawyers, solicitors, and all classes of employees connected with the administration of justice, their charges or fees.

The time for prescription runs from the date of the conclusion of the litigation, by judgment or compromise, or from the date of the termination of the powers of the solicitor, or from the time the lawyer ceased rendering his services.

With regard to unfinished litigation which is being prosecuted by the same lawyer, the period shall be five years from the time the fees or charges became due, in the absence of an agreement between the parties as to the time of payment.

2. To notaries, the fees for the deeds or instruments passing before them, the period for prescription running from the date of their execution.

3. To business agents, their fees or salaries, the period running from the time they were due.

4. To physicians and surgeons, pharmacists and others engaged in the profession of attending the ill, their visits, operations, and medicines. The time runs from the date of the acts which created the debt.

**4067** [4033]. The action of creditors for the revocation of the acts performed by the debtor to the prejudice or in fraud of their rights, prescribes one year after the date the act took place, or after the time the creditors had notice thereof.

**4068** [4034]. An action on account of injury<sup>39</sup> against the deceased, for the revocation of a legacy or donation, prescribes one year after the date the injury against him took place, or after the heirs learned thereof.

**4069** [4035]. After one year, the obligation prescribes to make payment:

<sup>39</sup> See note on page 38.

1. To inn and tavern keepers, for board, lodging, etc., furnished by them.

2. To the owners of colleges or boarding schools, the price of the board of their pupils, and to the other teachers, the tuition fees.

3. To teachers of sciences and arts, their monthly stipend.

4. To merchants and retailers of provisions and liquors, the price of the goods they sell others who are not such, or who, being such, are not engaged in the same business.

5. To servants employed by the year, or shorter terms, to day laborers and mechanics, the price of their wages, labor or work.

**4070** [4036]. In all the cases of the three preceding articles prescription runs even when the services have continued, and it shall cease to run only when there has been an account stated acknowledged by a writing, note or public instrument, or a suit has been instituted which has not been extinguished.

**4071** [4037]. The civil liability contracted on account of injury<sup>40</sup> or calumny prescribes likewise after one year, whether the injuries be verbal or in writing, as does the civil reparation for damages caused by animals or by offenses or quasi-offenses.

**4072** [4038]. The obligation to answer to a person disturbed in possession or dispossessed for his maintenance in or restoration to possession, also prescribes after one year.

**4073** [4039]. The action of riparian owners to recover the trees and portions of land carried away by the current of streams prescribes after six months.

**4074** [4040]. The action of the purchaser to rescind the contract, or to recover indemnity for the non-apparent charge or servitude to which the thing purchased is subject, and of which no mention was made in the contract, prescribes also after six months.

**4075** [4041]. A redhibitory action for the annulment of a contract of purchase and sale; and an action on account of a redhibitory vice for the reduction of the price by the diminished value, prescribes after three months.

<sup>40</sup> See note on page 38.

**4076** [4042]. The action of the husband against the legitimacy of the child conceived or borne by his wife during the marriage, prescribes after two months.

**4077** [4043]. The action of the heirs of the husband to question the legitimacy of the child, when the husband died without having questioned it within the time stated in the preceding article, prescribes likewise after two months.

### **SUPPLEMENTARY TITLE. OF THE APPLICATION OF THE CIVIL LAWS.**

**4078** [4044]. The new laws must be applied to previous acts, when they only deprive the private individuals of rights which are merely expectant rights; but they cannot be applied to prior acts, when they destroy or affect vested rights.

**4079** [4045]. The new laws must be applied even when they deprive individuals of the powers which belonged to them, and which they have not yet exercised, or which have not produced any effect.

**4080** [4046]. The civil capacity of persons is governed by the new laws, even though they abrogate or modify the qualities established by former laws; but only as to subsequent acts and effects, and the new law cannot invalidate or alter whatever has been done by virtue of the capacity which persons had under the former laws, nor the effects produced under the protection of the old law.

**4081** [4047]. The new laws relating to the powers and rights of husbands apply even to those married before its promulgation.

**4082** [4048]. The guarantees given by the laws in force before the publication of the Code to married women for the security of their dowries or other property delivered to their husbands, to minors or incapacitated persons in the property of their tutors and curators, to children in the property of their parents, and the charges imposed upon the administrators of State funds, are governed by the new laws,

excepting any pledges or express mortgages constituted, which shall be governed by the laws in force at the time of their constitution.

**4083 [4049].** The rescissory actions on account of lesion <sup>41</sup> arising out of contracts prior to the publication of the Civil Code, are governed by the laws in force at the time the contracts were entered into.

**4084 [4050].** Adoptions and the rights of the children adopted, even though there are no adoptions under the new laws, are governed by the laws in force at the time the juridical acts were executed.

**4085 [4051].** Prescriptions which began to run before the new Code went into effect are subject to the former laws; but if under said laws a longer period is required than that fixed by the new laws, they shall nevertheless be completed upon the expiration of the period fixed by the new laws, counted from the date the new Code went into effect.

<sup>41</sup> In Civil Law, a term used to signify the injury suffered, in consequence of inequality of situation, by one who does not receive a full equivalent for what he gives in a commutative contract. (Bouvier, Law. Dict.)

# **LAW OF THE CIVIL REGISTRY.**



# APPENDIX.

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## Law of the Civil Registry of the Capital of the Argentine Republic and National Territories, Sanctioned October 31, 1884.

### CHAPTER I.

#### Of the Employees of the Registry.

**Article 1.** Within six months after the promulgation of this Law, the municipalities of the capital and national territories shall establish one or more offices for the registration of the civil status of persons.

**2.** In the national territories where there is no municipality, the executive power shall appoint the employees necessary for the establishment of the registry, and shall prescribe the limits of the district in which they are to discharge their functions.

**3.** The functions entrusted by this law to the head of the registry shall be discharged, indistinctively, by him or his immediate subordinate.

**4.** The head of the registry and his immediate subordinate who is to act in his stead must be a lawyer or notary public.

**5.** Upon taking office the employees of the registry shall take an oath in the presence of the mayor (*intendente*) of the municipality or the governor of the territory.

**6.** The employees of the registry shall receive no other emoluments than the salary assigned them by the law or the municipal ordinances.



## CHAPTER II.

### Of the Books of the Registry.

7. The registry of the civil status shall be divided into three sections: one, of births, another, of marriages, and the third, of deaths, and it shall be kept in duplicate and in three books, one for each section.

8. The books shall contain the full text of this law on the first pages thereof, and their sheets shall be numbered and signed by the president of the municipal board or the governor of the territory, who shall certify on the last sheet the number of sheets each book contains.

9. At the end of each book there shall be added an alphabetical index of all the records it contains, there being taken, for the purpose of the record, the first letter of the surname of the person recorded, and in marriages, the initial letters of the surnames of both spouses separately.

10. On the last day of the year, the books of the registry shall be closed, the head of the office and the president of the municipality or the governor of the territory certifying at the end thereof the number of record entries contained in each, and one copy shall be placed in the archives of the office and the other in the general archives of the courts or in the office of the governor of the territory.

11. If any of the books of the registry is lost or destroyed, a copy thereof shall be transcribed immediately into another book clothed with the formalities prescribed in art. 7, the correctness thereof being certified to, in the case of books filed in the archives by the persons in charge of the custody of both copies, and otherwise, by the head of the office and the president of the municipality or the governor of the territory.

12. The head of the registry, the general archivist, and the governors of the national territories, are liable for the destruction, alteration, or loss of the books entrusted to their care, if they do not prove that it occurred without their fault.

**CHAPTER III.****Of the Records of the Registry in General.**

**13.** The records in the registry shall be entered in the proper book one after the other, in numerical order, without any blank spaces being left between them, and shall set forth the date they are entered, and the name, age, status and domicile of all the persons taking part therein.

**14.** The entire record must be entered in both copies of the registry and shall be sealed in both with the seal of the office and signed by the head thereof or his substitute, the persons interested and two witnesses of full age residing in the district, any reason preventing either the latter or the former from signing being stated.

**15.** The marginal notes shall likewise be sealed and signed by the head of the office in both copies of the registry, and even by the persons interested and witnesses, if the notes are other than notes of mere reference.

**16.** When there is not sufficient space in the margin opposite a record wherein to make the necessary notation, it shall be continued at the foot of the last record, the proper reference being written in both places.

**17.** No abbreviations or figures can be used in the records in the registry nor in the marginal notes, not even in the dates, nor can any erasures be made, and attention shall be called at the foot of the record itself before its signature to any amendments or interlineations.

**18.** Every record must be read to the persons interested and witnesses before its signature, and even shown to them if they so request, a statement to the effect that this formality has been fulfilled being written at the end thereof.

**19.** Nothing which is irrelevant or which should not be stated in accordance with the provisions of this law can be expressed in the records, not even as a note or in any other form.

**20.** Powers of attorney and other documents presented for the entry of records in the registry must be signed by the

person presenting them and the head of the office, and placed in the archives under the same number as the record to which they belong.

**21.** When it becomes necessary to suspend a record in the registry, the cause of the suspension shall be set forth therein, and in order to continue it a new record shall be entered, marginal reference notes being written opposite each.

**22.** After a record has been signed, it cannot be corrected or supplemented except by the decree of a judge of competent jurisdiction.

**23.** Likewise, a change in or addition to a name or surname cannot be recorded without authorization from the judge of competent jurisdiction on the petition of the person interested, published in the press or in the public places.

**24.** The persons in charge of the registry cannot authenticate the records which relate to themselves or to their relatives or connections, and their place shall be taken in such cases by their immediate inferior.

**25.** The person in charge of the registry is obliged to give the persons interested, within twenty-four hours after application therefor is made, an authenticated copy of the records appearing in their books, and they shall always be required to transcribe the record in full with the marginal notes which may appear opposite it.

**26.** Certified copies issued in proper form by the person in charge of the registry, over his signature and under the seal of his office, establish a legal presumption of the truth of the facts therein contained according to the provisions of the Civil Code.

**27.** No certificate taken from a register other than the registry of the civil status can be produced in court to prove facts which should have been recorded therein, without the proper record having first been made.

**28.** If the head of the office knows of the existence of a fact which should be recorded in the registry, he shall, after the expiration of the period within which the record should be applied for, proceed to make the necessary inquiry solely for the purpose of making the proper record, and he shall

denounce the violators of the law to the government attorneys, and when there are none, to the justice of the peace.

**29.** Any individual present at an act which should be recorded in the registry is obliged to appear when summoned by the head of the office to witness the record.

## **CHAPTER IV.**

### **Of Births.**

**30.** The following shall be recorded in the book of births:

1. All the births taking place in the capital and national territories.
2. Those occurring outside of said jurisdictions, if their parents have their domicile therein.
3. Any certificate of birth the recording of which is requested.
4. The acknowledgment and legitimation of natural children.
5. Judgments relating to legitimate and natural filiation.

**31.** A report of the birth must be made within three days thereafter to the person in charge of the registry, who shall go to the place where the recently born child is in order to assure himself of its existence, and then prepare the proper record in his office with the formalities prescribed by this law

**32.** With regard to births occurring outside of the capital and national territories, the term for the report thereof runs from the time the parents return to their domicile or elect another domicile within said jurisdictions.

**33.** In the national territories, it shall not be necessary for the head of the office to go to the domicile of the recently born child, when there is a distance of more than five kilometers between the office and said domicile, and in such case the existence of the person shall be established by means of certificates issued by the justice of the peace or the

military authority and two witnesses, to which end the term within which the report of the birth must be made is extended to eight days.

34. If the record of a birth is applied for after the legal term, a judicial order must be presented in order to make it.

35. The judicial order shall be made by the judge of first instance, or, if there is none, by the justice of the peace, on the petition of the party interested, of the head of the office or of the government attorney, and said order shall set forth the age of the person halfway between the highest and lowest age he could have in view of his physical development and appearance, in the opinion of experts.

36. In the case of legitimate children the father, and in his absence or default the mother, and in her default the nearest relative at the place, shall be obliged personally or through another person to make the report of the birth in the office of the registry.

37. If the child is illegitimate, the person in whose care the child has been placed shall be obliged to report the birth.

38. Without prejudice to the provisions of the preceding articles, the physician and the midwife attending a birth of the legitimacy of which they are not certain, and the person in whose house the birth took place, if a house other than that of the mother, are obliged to report it within the legal term to the head of the office of the registry.

39. Births occurring in hospitals, asylums, jails or other similar establishments, shall be reported by their respective administrators.

40. The administrators of orphan asylums, and, in general, any person finding a new-born child, or in whose house a child has been abandoned, are obliged to report the birth and take to the registry office the clothing, documents and other objects found with it, all of which shall be kept under the same number as that which corresponds to the record.

41. If the person in charge of the registry, on going to ascertain the existence of the new-born child, finds it dead, he shall make the record in the book of deaths. No presumption whatsoever shall arise from such record, howsoever

it be drafted, as to whether it was born with life or not, even though the witnesses declare one thing or the other.

**42.** The registration of the birth shall be made in the form of a record stating: 1. The day, place and hour thereof; 2. The sex; 3. the name given the child; 4. The name, surname and domicile of the father, mother and witnesses; 5. The name and surname of the paternal and maternal grandparents, and 6. The name, surname, and domicile of the person who applies for the record of the birth.

**43.** If natural children are involved, no mention shall be made of the father or mother, unless the latter or the former acknowledge it before the head of the office, in which case there shall be stated solely the name of the father or mother who acknowledges it.

**44.** In no case can the name of the father or mother be recorded when the filiation with respect to said father and mother has the vice of being adulterine, incestuous or sacrilegious.

**45.** If more than one child is born alive at the same birth as many records shall be entered in the book as there are persons born, special mention being made of any physical marks which may contribute to distinguish them from each other in later life.

**46.** The birth of a foundling shall be registered by means of a special record stating the place and date the child was found, its apparent age, its sex, the name and surname given it, or the documents, clothing and other objects found with it.

**47.** The registration of certificates of birth shall be made by transcribing them in the record in full and giving the name and domicile of the person applying therefor.

**48.** The acknowledgment of natural children shall be recorded by means of a record to be made in any Registry office, even though not that of the domicile of the person making it, and making notes of reference in the margin opposite the record of the acknowledgment as well as opposite the record of the birth.

**49.** If the certificate of birth is not recorded in the office, the person in charge of the registry shall forward within.

twenty-four hours to the head of the office in which it is recorded, a certified copy of the acknowledgment, as well as of the marginal notes, for the purpose of record.

**50.** Judges before whom the acknowledgment of natural children is made and notaries who execute instruments of this character shall forward within the term fixed in the preceding article, for the purposes stated therein, a copy of said documents to the head of the office in which the birth is recorded, the same provisions applying also to final judgments relating to legitimate or natural filiation.

**51.** The legitimation of natural children shall be recorded by means of notes of reference in the margin opposite the record of their acknowledgment and opposite the record of the marriage.

**52.** In cases in which the Civil Code authorizes legitimations in accordance with foreign laws, the record shall be made by the transcription in full of the duly authenticated documents which establish them.

**53.** The records of judgments of filiation, of instruments of acknowledgment, of natural children and, in general, of any other document, shall be made by embodying in the record a full copy thereof and stating the name and domicile of the person applying therefor.

## **CHAPTER V.**

### **Of Marriages.**

**54.** The following shall be recorded in the book of marriages.

1. Those celebrated in the capital and in the national territories.
2. Those celebrated without the said jurisdictions, if the husband has his domicile in the same.
3. Any certificate of marriage the record of which is requested.
4. Final judgments declaring the nullity of a marriage or decreeing a divorce.

**55.** Within eight days following the celebration of a marriage, the husband is obliged to present for record in the registry a copy of the certificate establishing the act, signed by the parish priest, pastor or minister of the religion, according to the rites of which it had been celebrated.

**56.** In the event of the death of the husband or the marriage having been celebrated *in articulo mortis*, with relation to him, the obligation to request the record rests on the wife.

**57.** Without prejudice to the provisions of the preceding articles, the ministers of any religion or sect before whom a marriage *in articulo mortis* is celebrated, shall forward for record to the office of the registry a copy of the certificate establishing it within twenty-four hours after its celebration.

**58.** The term for the record of marriages celebrated without the capital and national territories shall run from the day following that on which the spouse obliged to apply for the record returns to his or her domicile, or following that on which he or she elects a new domicile within the jurisdictions referred to.

**59.** The civil and ecclesiastical judges shall forward for record to the head of the registry, within twenty-four hours after it becomes final, a copy of every judgment which declares the nullity of a marriage or decrees a divorce.

**60.** Certificates of marriages celebrated without the capital or national territories cannot be recorded in the Registry unless they are presented duly authenticated.

**61.** The record of a certificate of marriage shall be made by transcribing therein a full copy thereof and stating the name and domicile of the person applying therefor.

**62.** The records of judgments of nullity or divorce shall be made in the same form, with the additional entry of marginal notes of reference opposite the record of the marriage annulled as well as opposite the record of the birth of their children.



## CHAPTER VI.

### Of Deaths.

**63.** The following must be recorded in the book of deaths:

1. All deaths occurring in the capital and national territories.
2. All deaths occurring outside of these jurisdictions if the persons had their domicile therein at the time of their death.

**64.** The surviving spouse, the descendants of the deceased, the ascendants, the nearest relative, and in default of any of these, any person of full age present at the death of a person, are obliged, in the order of their enumeration, their sex and their age, to report the death to the head of the office of the registry personally or through another, within twenty-four hours after the occurrence of the death.

**65.** When the death takes place in a house other than that of the deceased, the obligation imposed by the foregoing articles rests also on the owner thereof.

**66.** If the death occurs in a convent, asylum, barracks, hospital, jail, or other public establishment, the superior, head or administrator is obliged to report it within the legal term.

**67.** A similar obligation rests on any person who finds a corpse which has been abandoned or concealed, or in a public place.

**68.** The official charged with the execution of a sentence of death shall make the report ordered by forwarding to the head of the registry a copy of the record of the execution with the statements required by this law, in so far as possible, in order that the record of death may be entered.

**69.** In addition to the formalities prescribed by this law for the record of death to be made, a medical certificate shall also be necessary, if there are any physicians in the place.

70. The physician who attended the deceased during his last illness, and in his default any other person called for the purpose, shall be obliged to examine the body and issue the certificate referred to in the preceding article.

71. The certificate shall state, in so far as possible, the name and domicile of the deceased, the immediate cause of his death and the day and hour it occurred, the physician being required to state whether he knows these circumstances from his own knowledge, or from hearsay.

72. The certificate must be presented to the head of the office by the persons or authorities obliged to report the death, and may even be demanded of the physicians *ex mero motu*, if the former are unable to obtain it or abandoned corpses are involved.

73. The record of death shall be made in the presence of two witnesses who had been present at the death or who had inspected the body, the witnesses being presented by the person whose duty it is to report the death, or they shall be called by the person in charge of the registry on his own motion, and one of them may be the same person who makes the report.

74. The record shall be made in the form of an entry to include the following in so far as possible: 1. The name, surname, nationality, sex, age, status, occupation and domicile of the deceased; 2. The name, and surname of his or her spouse, if married or widowed; 3. The disease or cause which produced death; 4. The place, day and hour it occurred; 5. The name, surname and domicile of the witnesses; 6. The name, surname, nationality and domicile of the parents of the deceased; 7. A statement of whether there is a will or not, and, in a proper case, whether it is holographic or by a public act, and the office in which it is to be found.

75. If the death took place in a prison or jail or by the execution of capital punishment, such circumstances shall not be set forth in the record of death.

76. If it is not possible to establish the identity of the deceased, the record shall be made including the details which it has been possible to obtain, stating particularly the

place where the death occurred or the corpse was found, the apparent age, any particular marks it bears, the probable date of the death, the clothing, papers or other objects found with it, and, in general, any information which may contribute to its identification.

77. If any authority subsequently establishes the identity of the person, he shall so inform the person in charge of the registry in order that he may make the supplementary record, entering a note of reference opposite each.

78. The papers and other objects found with the body shall be kept in the office under the same number as that which corresponds to the record of death.

79. Deaths occurring without the capital and national territories to which reference is made in subdivision 2 of article 63, shall be recorded in the registry with the transcription in full of the duly authenticated certificate issued at the place of death, the name of the person applying for the record being also entered.

80. The captains of men-of-war and masters of merchant vessels, the consuls of the Republic in foreign countries, the commanders of forces or armies in the field, and in general all national or provincial authorities who keep records of deaths, shall forward as soon as possible through the proper channels to the municipality of the capital or to the governor of the territory an authenticated copy of the records they make relating to persons domiciled in said jurisdictions, for record in the office of the domicile which the deceased had at the time of his death.

## CHAPTER VII.

### Of Interments.

81. The persons in charge of cemeteries or burial places shall not permit the interment of any body without authorization from the person in charge of the registry.

82. The authorization shall be given after or before the record of the death is made, the death being proved by the medical certificate referred to in Article 72 and one witness, or by the declaration of two witnesses in the absence of a physician.

83. The head of the office may withhold the issue of the burial permit until after the record, in order to incite the persons interested to furnish the data therefor.

84. The interment cannot take place before twelve hours after the death, nor can it be delayed for more than thirty-six, without prejudice to the provisions of municipal or police regulations as to specific cases.

85. If the medical report or any other circumstance raises suspicions of the death having been caused by a crime or disease of interest to sanitation, the head of the office shall give the proper notice to the judicial or municipal authority and shall not issue the burial permit until he is advised that any necessary measures have been adopted.

86. Any authority ordering the interment of a body shall forward to the head of the registry the data for the record and the issuance of the proper permit.

## CHAPTER VIII.

### Of Corrections of Records in the Registry.

87. The judge of competent jurisdiction to take cognizance of the correction of records in the registry or additions thereto, is the Judge of First Instance, or if there be none, the justice of the peace of the place in which is situated the office where the record to be corrected or supplemented has been made.

88. The proceedings shall be had with the intervention of the government attorney, if there be any, and according to the ordinary procedure.

89. Within twenty-four hours after his decision becomes final, the judge shall transmit to the head of the office an authenticated copy thereof for record in the registry.

90. The record shall be made by transcribing the judgment in full in the record and inserting marginal or reference notes therein and in the margin of the record corrected or supplemented.

91. After a record has been corrected or supplemented, a copy thereof cannot be issued without embodying therein also the record which shows the correction or addition.

## CHAPTER IX.

### Penal Provisions.

92. Any person who, without committing a criminal offense, violates this law, either by doing what it prohibits, or omitting what it orders, or by hindering another from fulfilling its provisions, shall be punished according to the gravity of the case, by the imposition of a fine ranging from ten to one hundred national *pesos*, or in case of insolvency, by imprisonment, at the rate of one day for every four *pesos*.

93. If the violation implies complicity in a criminal offense, it shall be considered merely as an aggravating circumstance of the same.

94. The penal liability established by this law is independent of the civil liability for damages.

95. The judge of competent jurisdiction for the application of penalties is the Letrado Civil Judge of First Instance, and if there be none, the justice of the peace of the domicile by the offenders.

96. The proceedings shall consist solely of an oral hearing and a term for the submission of evidence, if necessary, which shall not exceed eight days, and they shall be instituted by the government attorney, or in his default by the head of the office of the registry.

97. There shall be no remedy whatsoever against the judgment rendered.

**CHAPTER X.****Transitory Provisions.**

98. The municipalities of the capital and national territories may create a stamp not to exceed two national *pesos* for the issuance of certified copies of the records in the registry and burial permits.

99. Persons dependent on charity or notoriously poor are not obliged to make use of the stamp, nor shall they be charged any fees for any act connected with the registry.

100. Where there is no municipality, a one *peso* national stamp shall be used.

101. The expense entailed by the execution of this law in the national territories where there is no municipality shall be charged to the same.

102. Let it be communicated to the executive power.

**Law No. 3703.**  
(Of August 24, 1898.)

**On the Civil Registry in the National Territories.**

**Article 1.** The functions entrusted by Law No. 1565 of October 31, 1884, to the persons in charge of the civil registry, may be discharged in the national territories by special commissioners to whom the respective governors shall entrust this duty for a specified time to be exercised at places located more than twenty kilometers from the permanent location of the office of the registry.

2. The commissioners shall be furnished blank forms for the making of records, and they shall observe the legal formalities in making them, delivering the original records at the first opportunity to the nearest office, where they shall be placed in the archives after their ratification by the commissioner and their transcription in the respective registry.

3. The period of eight days fixed by Article 33 of the law in force for the declaration of the birth in the same territories is hereby extended to three months, when there is a distance of more than five kilometers between the domicile of the person born and the permanent location of the office of the civil registry.

4. The civil registry in the national territories shall be in charge of the justices of the peace.

5. Let it be communicated to the executive power.

**Law No. 3986.**  
**(Of June 3, 1901.)**

**Article 1.** The provisions contained in Articles 1 and 2 of Law No. 3703 of August, 1898, are hereby extended to the celebration of civil marriages in the national territories.

2. Let it be communicated to the executive power.

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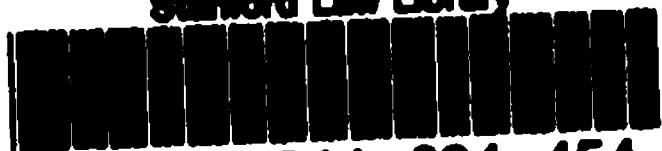
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